

1 **THE LAW OFFICES OF**  
2 **RONALD A. MARRON**  
3 RONALD A. MARRON (SBN 175650)  
4 *ron@consumersadvocates.com*  
5 MICHAEL T. HOUCHIN (SBN 305541)  
6 *mike@consumersadvocates.com*  
7 LILACH HALPERIN (SBN 323202)  
8 *lilach@consumersadvocates.com*  
9 651 Arroyo Drive  
10 San Diego, California 92103  
11 Telephone: (619) 696-9006  
12 Facsimile: (619) 564-6665  
13 **Attorneys for Plaintiffs**  
14 *(additional attorneys on signature page)*

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

13 Case No: 37-2021-00030939-CU-WM-CTL

14 **CLASS ACTION**

15 **VERIFIED FIRST AMENDED PETITION FOR WRIT OF**  
16 **MANDATE**

17 **AND**

18 **FIRST AMENDED CLASS ACTION COMPLAINT FOR:**

19 BARRY ALLRED and BRAD PENLEY,  
20 on behalf of themselves and all others  
21 similarly situated,

22 Plaintiffs and Petitioners,

23 v.

24 CITY OF SAN DIEGO;  
25 DOES 1-10, INCLUSIVE,

26 Defendant and Respondent.

- 27 **1. PETITION FOR WRIT OF MANDATE FOR**  
**VIOLATION OF THE CALIFORNIA**  
**CONSTITUTION;**
- 28 **2. UNLAWFUL MUNICIPAL TAXES AND FEES;**
- 3. MONEY HAD AND RECEIVED;**
- 4. BREACH OF EXPRESS WARRANTY;**
- 5. BREACH OF IMPLIED COVENANT OF GOOD**  
**FAITH AND FAIR DEALING;**
- 6. NEGLIGENCE**

*Allred v. City of San Diego, et al.*

VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND FIRST AMENDED CLASS ACTION  
COMPLAINT

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1 Barry Allred and Brad Penley (“Plaintiffs” and “Petitioners”), on behalf of themselves and all  
2 others similarly situated, by and through their undersigned counsel, hereby bring this action (“Action”)  
3 against Defendant the City of San Diego (“Defendant”), and upon information and belief and investigation  
4 of counsel, allege as follows:

5 **I. INTRODUCTION**

6 1. This Action alleges that Defendant the City of San Diego (“Defendant” or the “City”)  
7 through its Public Utilities Department unlawfully collects property-related fees from Residential (i.e.,  
8 Single-Family Residential wastewater customers and Multi-Family Residential wastewater customers)  
9 and Commercial customers (collectively “R&C” customers or the putative “Class”) for wastewater  
10 services that exceed the costs to provide these services. Since at least 2009, Defendant has levied and  
11 used these excessive wastewater fees to subsidize about 85% of the costs to operate the Industrial  
12 Wastewater Control Program (“IWCP”) which is operated by San Diego Public Utilities Department  
13 (“SDPUD”) and only exists to regulate and otherwise provide services to industrial dischargers whose  
14 wastewaters place unusually high demands on Defendant’s wastewater treatment facilities.

15 2. A performance audit (Exhibit 1) published in 2020 by the San Diego Office of the City  
16 Auditor (“City Auditor”) estimated that between FY 2010 and FY 2019 Defendant had used \$33.3 million  
17 in wastewater fees paid by R&C customers to fund the IWCP and stated there was growing evidence from  
18 2013 to 2020 that Defendant was in violation of Prop 218 and related statutes and municipal policies.<sup>1</sup>  
19 *See generally* Exh. 1. The City Auditor had first identified and reported this unlawful practice in a 2013  
20 performance audit of the IWCP.<sup>2</sup>

21 3. Defendant’s new wastewater rates, which went into effect January 1, 2022, are based on  
22 the assumption that the putative Class will provide at least 90% of the IWCP’s funding during FY 2022.<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>1</sup> *See generally*, City of San Diego Office of the City Auditor, *Follow-Up Performance Audit of the Public*  
25 *Utilities Department’s Industrial Wastewater Control Program* (“2020 Follow-Up Audit”), July 2020,  
26 *available at* [https://www.sandiego.gov/sites/default/files/21-001\\_iwcp\\_follow-up.pdf](https://www.sandiego.gov/sites/default/files/21-001_iwcp_follow-up.pdf).

27 <sup>2</sup> *See generally*, City of San Diego Office of the City Auditor, *Performance Audit of the Industrial*  
28 *Wastewater Control Program* (“2013 Audit”), *August 2013*, *available at* [https://www.sandiego.gov/sites/default/files/14-002\\_IWCP.pdf](https://www.sandiego.gov/sites/default/files/14-002_IWCP.pdf)

<sup>3</sup> Raftelis Financial Consultants, Inc. (“Raftelis”), *Addendum to the Final Report*, July 07, 2021, pp. 1-2,  
*available at* [https://www.sandiego.gov/sites/default/files/final\\_wastewater\\_report\\_with\\_](https://www.sandiego.gov/sites/default/files/final_wastewater_report_with_)

1 These excess charges Defendant levies on R&C customers are unlawful under Article XIII of the  
2 California Constitution and constitute unlawful fees under California’s Government Code and San Diego  
3 City Council Policy 100-05.

4 4. These excessive property-related wastewater fees unlawfully subsidize the IWCP, a  
5 government entity from which R&C customers receive no immediately available benefits, and provide an  
6 average annual windfall of about \$3,000-\$4,000 for each industrial discharger that is subject to IWCP  
7 regulation.<sup>4</sup>

8 5. Because the SDPUD fails to collect from industrial dischargers more than a small fraction  
9 of the IWCP’s costs, including nothing from most industrial dischargers subject to IWCP regulation  
10 located outside the City of San Diego, the remaining costs are instead imposed by the City on R&C  
11 customers located within the City of San Diego.

12 6. This practice unlawfully subsidizes select private industrial dischargers at the expense of  
13 Plaintiffs and the putative Class.

14 7. Defendant is required, by state law, by the California Constitution, and by San Diego City  
15 Council policy, to impose on R&C customers only fees that equal the cost of wastewater services actually  
16 provided to those customers’ properties and from which they directly and immediately benefit.

17 8. Defendant increased the costs of permits issued by the IWCP on July 1, 2022, and has  
18 scheduled additional step increases for July 1st of 2023, 2024, and 2025. From July 2022 to July 2025,  
19 Defendant will increase the costs industrial wastewater dischargers pay for IWCP permits and regulation  
20 by a factor of four. This 400% increase in the permit fees is clear evidence that Defendant has been  
21 drastically undercharging industrial dischargers for the services provided by the IWCP.<sup>5</sup> For example,  
22 the standard IWCP permit for “Significant Industrial Users” will be increased from \$2,250 on July 1,  
23

24 \_\_\_\_\_  
25 addendum\_appendices\_07-07-21.pdf. The Addendum starts with new pagination after page 49 of the  
26 *City of San Diego Wastewater Financial Plan Cost of Service, and Rate Study-Final Report*, March 23,  
27 2021.

28 <sup>4</sup> R&C customers have subsidized the IWCP between \$3 million and \$4 million per year since 2009, and  
there are approximately 1000 industrial dischargers subject to IWCP regulation, in any given year. *2020  
Follow-Up Audit*, pp. 3, 7.

<sup>5</sup> San Diego Public Utilities Department, *Industrial User Discharge Permits*,  
<https://www.sandiego.gov/public-utilities/permits-construction/industrial-user-permits>.

1 2022, to \$8,999 on July 1, 2025. Plaintiffs and the Class have been paying wastewater rates that  
2 compensate for this significant under-funding of the IWCP from industrial dischargers.

3 9. Effective January 1, 2022, the City established new wastewater rates that explicitly assume  
4 that the putative Class will continue to subsidize significant portions of the IWCP's costs until FY 2025.

5 10. This Writ Petition and proposed Class Action accordingly seek to compel Defendant to  
6 cease these illegal and unconstitutional practices and to reimburse Plaintiffs and the putative Class for  
7 illegal taxes and fees that Defendant has imposed on the Class since 2009.

8 **II. JURISDICTION AND VENUE**

9 11. Plaintiffs, individually and on behalf of all others similarly situated, bring this Action in  
10 this Court pursuant to the California Constitution, Article VI, Section 10, and Section 382 of the California  
11 Civil Code. This Court has subject matter jurisdiction over both the Writ Petition and the proposed class  
12 action.

13 12. Defendant the City of San Diego is a governmental entity located in and acting within the  
14 State of California and the County of San Diego. The exercise of personal jurisdiction over this Defendant  
15 by this Court is therefore proper.

16 13. Venue is proper in this Court because Defendant is a governmental entity located in and  
17 operating in this county. All of the decisions, transactions, and billing of illegal taxes and fees complained  
18 of herein occurred in this county including specifically the transactions between Plaintiffs and Defendant.

19 **III. PARTIES**

20 14. Plaintiff and Petitioner Barry Allred lives in and is a resident of the City of San Diego.

21 15. Mr. Allred is currently and has during the proposed Class Period been a "Single-Family  
22 Residential" customer of SDPUD.

23 16. Plaintiff and Petitioner Brad Penley lives in and is a resident of the City of San Diego.

24 17. Mr. Penley is currently and has during the proposed Class Period been a "Multi-Family  
25 Residential" wastewater customer of SDPUD.

26 18. Plaintiffs have paid and continue to pay SDPUD for sewer and wastewater services  
27 provided to their single-family and multi-family residential properties during the proposed Class period,  
28 as described herein, and abided by Defendant's wastewater terms of service.

1 19. Plaintiffs have standing to assert the claims set forth herein on their own behalf and for a  
2 proposed class of similarly situated persons.

3 20. Plaintiffs exhausted all administrative or other remedies available to them before  
4 commencing this action. Plaintiffs further have public interest standing to prosecute the claims of all  
5 other individuals constituting the proposed Class.

6 21. Defendant City of San Diego is a California charter city and municipal corporation located  
7 in San Diego County.

8 22. The true names and capacities of Defendants sued as Does 1 through 10 are unknown to  
9 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious names. Plaintiffs will  
10 amend this Complaint to allege the true names and capacities of Does 1 through 10 when ascertained.  
11 Plaintiffs are informed and believe, and thereupon allege, that each of the Doe Defendants, jointly and  
12 severally, are in some manner responsible for the damages alleged herein. Any reference to “Defendant”  
13 or “Defendants” includes Doe 1 through 10, inclusive.

14 **IV. GOVERNMENT CLAIMS REQUIREMENTS**

15 23. On June 3, 2021, Plaintiff/Petitioner Allred presented to the City a written claim, using  
16 the required City of San Diego form, for a refund of excess and unlawful fees and illegal taxes paid to  
17 the City of San Diego for wastewater services to date as described herein, on behalf of himself and others  
18 similarly situated.

19 24. On June 15, 2022, Plaintiff/Petitioner Penley presented to the City a written claim, using  
20 the required City of San Diego form, for a refund of excess and unlawful fees and illegal taxes paid to  
21 the City of San Diego for wastewater services to date as described herein, on behalf of himself and others  
22 similarly situated.

23 25. Plaintiffs’ written claims complied with the requirements of the California Government  
24 Claims Act. Cal. Gov’t Code §910, *et seq.*

25 26. Defendant failed to respond to Plaintiffs’ claims within the statutory 45-day period.

26 27. Plaintiffs have exhausted all meaningful administrative remedies available to them.

27 28. Plaintiffs therefore have complied with the Government Claims Act and accordingly have  
28 standing to present the claims described herein.

1 **V. FACTUAL ALLEGATIONS**

2 29. Defendant City of San Diego, through its Public Utilities Department, provides  
3 wastewater collection and treatment services (“wastewater services”) to residential, commercial, and  
4 industrial customers within its designated service area.

5 30. Defendant contracted with Plaintiffs and the Class to provide these wastewater services.  
6 SDPUD’s “Customer Service” webpages publish the written offered terms of wastewater services and  
7 establish the manner in which potential customers can accept Defendant’s offer and also how they can  
8 terminate the service agreement.<sup>6</sup> *See generally*, Exh. 2. Contracts were formed when Plaintiffs and  
9 members of the putative Class accepted SDPUD’s offer to provide wastewater services.

10 31. Implied-in-fact contracts were also formed between Defendant and Plaintiffs and  
11 members of the putative Class when, over extended periods of time, SDPUD provided wastewater  
12 services in exchange for Plaintiffs and members of the putative Class providing SDPUD payment for  
13 these services and adhering to the promises they made regarding SDPUD’s terms of wastewater service.

14 32. The SDPUD is a department of the City of San Diego that is mandated to provide  
15 wastewater services to customers, and to bill customers for the cost of those services consistent with its  
16 published rates, Prop 218 and related statutes, and San Diego City Council policies.

17 33. Because industrial wastewater discharges are in general significantly different in both  
18 quality and quantity from R&C discharges, industrial dischargers are subject to permitting, monitoring,  
19 and regulation by SDPUD’s Industrial Wastewater Control Program (“IWCP”).<sup>7</sup>

20 34. The primary focus of the IWCP is to minimize toxic discharges from industrial  
21 dischargers, and the IWCP does so by permitting, inspecting permittees, periodically sampling and testing  
22 permittee wastewater, and implementing enforcement measures to deter industrial dischargers from  
23 violating applicable federal and state regulations and statutes.

24 35. The SDPUD’s wastewater service area extends beyond the City of San Diego boundaries.

25 \_\_\_\_\_  
26 <sup>6</sup> *See generally* City of San Diego Public Utility Department, *Public Utilities Customer Service Official*  
*Website*, <https://www.sandiego.gov/public-utilities/customer-service>.

27 <sup>7</sup> “Any person, municipality . . . desiring to discharge industrial waste into a public sewer, which may  
28 interfere with the operation and maintenance of the sewer system or with the wastewater treatment  
facilities, shall obtain a Permit to discharge waste into the system . . . .” San Diego Municipal Code  
§ 64.0500. These permits are issued and managed by the IWCP.

1 Participating San Diego County municipalities and agencies are listed below in Table 1.

2 36. By California's Constitution and statutes and San Diego City Council Policy 100-05,  
3 Defendant is required to levy and collect permit fees and other charges from industrial dischargers that  
4 are adequate to fund 100% of the IWCP's costs since industrial dischargers are the only SDPUD  
5 customers who receive immediate benefits from IWCP regulation and other operations.

6 37. In fact, however, Defendant has failed for more than a dozen years to collect more than a  
7 small fraction (i.e., on average about 15%) of the funds necessary to operate the IWCP from the industrial  
8 dischargers subject to IWCP regulation.

9 38. Because the City has no legitimate means by which it can make up for its failure to assess  
10 and collect fees from its industrial dischargers to fund the IWCP, Defendant make up that deficit by  
11 collecting excess fees above the cost to provide wastewater services from R&C customers who, as  
12 established in multiple reports by the City Auditor and consulting firms hired by the City, have funded  
13 about 85% of the IWCP's costs over the putative Class Period.

14 39. SDPUD also fails to collect any permit fees from most industrial dischargers subject to  
15 IWCP regulation who are located outside the City of San Diego. This shortfall is also improperly charged  
16 to San Diego R&C customers.<sup>8</sup>

17 40. Table 1, below, shows municipalities and agencies outside the City of San Diego to which  
18 SDPUD also provides wastewater services.

19 Table 1: Municipalities and Agencies Contracting with SDPUD for Wastewater Service

20

21 Chula Vista	National City
22 Coronado	Poway
23 Del Mar	Alpine Service Area
24 El Cajon	East Otay Mesa Service Area

25  
26

27 \_\_\_\_\_  
28 <sup>8</sup> 2020 Follow-Up Audit, p. 4.



Imperial Beach	Lakeside Service Area
La Mesa	Spring Valley Service Area
Lemon Grove	Winter Gardens Service Area

**A. Public utilities in California, including SDPUD, are required by law to collect property-related service fees only for the cost to provide that service to that property.**

41. Public utility agencies in California operate under express requirements set forth in the state Government Code and the California Constitution for assessing and collecting fees that are “property-related.” Cal. Const., Art. XIII D, § 2, subd. (h) and § 6, subd. (b).

42. These constitutional requirements were established by a public referendum entitled Proposition 218 which amended the California Constitution.

43. As established by Proposition 218, any such property-related fees must be proportional to and must not exceed the cost of providing those services to that property and must be used by the municipality to defray only the actual cost of providing those services. Cal. Const., Art. XIII D, § 6, subd. (b).

44. The wastewater fees Defendant charges Plaintiffs and the Class are property-related fees.

45. Proposition 218 also established that a government may not impose a fee for a property-related service “unless the service is actually used by, or immediately available to, the owner of the property subject to the fee. A fee based on potential or future use of a service is not permitted . . . .” Cal. Const., Art. XIII D, § 6, subd. (b)(4).

46. Further, California’s Government Code Section 54999.7 requires that any fees assessed by public agencies must be proportional to the cost of the services provided.

47. Government Code Section 54999.7 requires that fees for public utility service other than electricity or gas “must not exceed the reasonable cost of providing the utility service.”

48. In addition, and more specifically, Government Code Section 50076, adopted pursuant to Proposition 13, states that any charge or fee is a “special tax” unless “the fee does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged[.]”

1 49. Government Code Section 50076 further requires that any fees assessed must not be used  
2 to collect money “for general revenue purposes.” If the proceeds from a fee are used for general revenue  
3 purposes the fee is a tax.

4 50. San Diego Council Policy 100-05 establishes that user fees, such as those for wastewater  
5 and IWCP services, “shall be proportional to the costs associated with providing the service or program”  
6 and that Defendant “shall . . . annually adjust[.]” user fees “to maintain the cost recovery level” required  
7 by this policy or other laws or regulations. City of San Diego Council Policy 100-05: *User Fee Policy*,  
8 March 20, 2009, pp. 4-5.

9 51. This Council Policy also establishes that the City must recover 100% of the cost of  
10 services from those to whom the services are provided unless collecting the fee is not cost-effective,  
11 collecting 100% would not comply with regulatory or statutory requirements, or if the purpose of the fee  
12 is not to generate revenue but to provide benefits to the recipients. *Id.*, pp. 3-4.

13 52. Defendant bills the charges for its wastewater services to San Diego property owners as a  
14 discrete element of their annual property tax bills or billed and paid monthly. These fees are assessed in  
15 San Diego on an address-specific basis. Defendant publishes in SDPUD’s “Customer Service” webpages  
16 how it calculates wastewater charges for each class of wastewater discharger.<sup>9</sup> In general, the charges  
17 are based on the volume of discharged wastewater as well as its “strength,” as periodically measured or  
18 estimated by Defendant.<sup>10</sup>

19 53. “Property-related service” means a public service having a direct relationship to property  
20 ownership. Cal. Const., Art. XIII D, § 2, subd. (h).

21 54. Wastewater services are, therefore, property-related services.

22 55. Wastewater service fees are, therefore, “property-related” fees under the California  
23 Constitution.

24 56. All fees for wastewater services must comply with the constitutional requirements of  
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26 <sup>9</sup> See generally, City of San Diego Public Utilities Department, *Customer Service*,  
27 <https://www.sandiego.gov/public-utilities/customer-service>.

28 <sup>10</sup> Defendants measure “strength” by the Total Suspended Solids (“TSS”) and Chemical Oxygen Demand  
 (“COD”) of the wastewater. See City of San Diego Public Utilities, *Sewer Billing Rates*,  
 <http://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/sewer>.

1 Proposition 218.

2 57. Under Proposition 218, any revenues from a property-related fee or charge cannot exceed  
3 the cost of providing the service for which the fee is assessed.

4 58. Proposition 218 also requires that revenues derived from the fee cannot be used for any  
5 purpose other than that for which the fee is assessed. *See* Cal. Const., Art. XIII D, §6, subd. (b)(2 -5)).

6 59. Government agencies that assess fees for property-related services bear the burden of  
7 demonstrating that they meet all Prop 218 requirements. Cal. Const., Art. XIII C, §1.

8 60. Any fee assessed by a public wastewater utility must therefore bear a direct relationship  
9 to the cost of the services actually provided and immediately available to the utility customer. Cal. Const.,  
10 Art. XIII D, § 6, subd. (b)(4). Such fees must not exceed the cost of providing that service to the property  
11 assessed, and the funds derived from the fees must not be used for any purpose other than delivering to  
12 that property those services for which the fees are assessed. Cal. Const., Art. XIII D, § 6, subd. (b).

13 61. Wastewater service fees charged by SDPUD to Plaintiffs and the putative Class violate  
14 all of these constitutional provisions and are therefore both illegal fees and illegal taxes under California  
15 law.

16 **B. A 2013 performance audit by the City Auditor found that SDPUD failed to collect**  
17 **IWCP permit and other fees from industrial dischargers and was charging excess**  
18 **wastewater fees to residential and commercial customers to fund about 85% of the**  
19 **IWCP's costs.**

20 62. In 2013, the City of San Diego Office of the City Auditor conducted an audit of SDPUD's  
21 Industrial Wastewater Control Program.<sup>11</sup>

22 63. The IWCP is the administrative program within SDPUD that is responsible for issuing  
23 wastewater permits to and regulating industrial wastewater dischargers.

24 64. IWCP permittees are exclusively industrial wastewater dischargers.

25 65. Because industrial wastewaters may be orders of magnitude greater in volume than other  
26 wastewater dischargers and often contain substances and contaminant loads that place greater demands  
27 on wastewater treatment infrastructure, the permitting process and associated regulation and enforcement  
28 are far more resource-intensive for such dischargers, and wastewater treatment is typically far more

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<sup>11</sup> *See generally, 2013 Audit.*

1 expensive on a per-property basis for these industrial dischargers. *See*, San Diego Municipal Code  
2 § 64.0500.

3 66. It is essential for that reason that SDPUD accurately assess, account for, and collect the  
4 fees owed to it from industrial users, including the fees necessary to fully fund the IWCP which only  
5 provides benefits to industrial dischargers

6 67. The City Auditor found in 2013, however, that the IWCP was characterized by outdated  
7 fees, billing lapses, and inadequate controls that limited program cost recovery from IWCP-regulated  
8 wastewater dischargers.<sup>12</sup>

9 68. Further, because of the agency’s error-riddled billing and collection practices and the fact  
10 it had not, as of 2020, updated many IWCP permit fees since 1984,<sup>13</sup> the IWCP has repeatedly failed to  
11 collect more than a small fraction of the IWCP’s costs from the industrial dischargers it serves.

12 69. The 2013 Audit disclosed that between FY 2010 and FY 2012, billable IWCP costs  
13 exceeded revenues collected from industrial dischargers subject to IWCP regulation by about \$8.3 million  
14 –meaning that only 15 percent of billable costs were recovered through program fees charged to regulated  
15 industrial dischargers.<sup>14</sup>

16 70. The remaining 85% of costs for the IWCP, the 2013 Audit found, “were offset by charges  
17 to other ratepayers, including residential and commercial customers” and that “the vast majority of  
18 [IWCP] program costs were being passed on to non-IWCP users [i.e., the putative Class] via [their]  
19 wastewater rates[.]”<sup>15</sup>

20 71. The 2013 Audit therefore concluded that illegal taxes or fees had likely been charged to  
21 R&C customers to offset millions of dollars that should have been collected from IWCP customers but  
22 were not.<sup>16</sup>

23  
24 <sup>12</sup> *Id.*, pp. 9-14.

25 <sup>13</sup> *2020 Follow-Up Audit*, p. 3.

26 <sup>14</sup> *2013 Audit*, p. 1.

27 <sup>15</sup> *Id.*, p. 2.

28 <sup>16</sup> *Id.*, pp. 1-2, 47. The City Auditor was careful not to include in its 2013 Audit the explicit legal conclusion that SDPUD was collecting illegal taxes, but rather “raised the possibility.” The City Auditor instead issued a confidential memorandum to the Mayor of San Diego discussing this “possibility” in greater detail.

1 72. In its 2013 Audit Report - the public version - the City Auditor made 13 separate findings  
2 of practices that SDPUD was required to implement to correct the agency's critical failures in financial  
3 controls, billing, and fee collection.

4 73. These were recommendations with which SDPUD agreed and was required to implement  
5 to correct the agency's improper collection of excess wastewater fees from its R&C customers.

6 74. In a 2020 Follow-Up Audit to the 2013 Audit, however, the City Auditor found that at  
7 least ten of thirteen of the 2013 Audit's required recommendations had never been implemented and that  
8 the improper fee collection practices had continued essentially unchanged between 2013 and 2020.  
9 Whereas all the recommendation in the 2013 Audit were only Priority 2 recommendations, all of the 2020  
10 Audit's recommendations were classified as Priority 1. Priority 1 recommendations are made when there  
11 is the possibility that "[f]raud or serious [legal] violations are being committed."<sup>17</sup>

12 **C. The City Auditor's 2020 Follow-Up Performance Audit of the IWCP found that**  
13 **SDPUD had failed to correct its improper fee collection practices and that**  
14 **Residential and Commercial customers were still being overcharged to make up for**  
15 **the agency's failure to collect adequate IWCP fees from industrial dischargers.**

16 75. In 2020, the City Auditor performed a follow-up assessment to its 2013 audit based in  
17 large part on concerns that Defendant had essentially failed to correct fully any of the recommendations  
18 made in the 2013 performance audit report.

19 76. The City Auditor found in 2020 that after seven years the IWCP had failed to implement  
20 nearly all of the 2013 Audit recommendations and had failed in general to correct any of the fee  
21 calculation, billing, and fee collection errors found in 2013.

22 77. The City Auditor concluded that SDPUD had essentially made no progress on correcting  
23 the 2013 Audit findings of improper wastewater fee collection from Residential and Commercial  
24 customers.

25 78. The City Auditor found that, between FY 2010 and FY 2019, \$33.3 million or 86% of  
26 total IWCP costs during that period—funds that should have been collected from IWCP-regulated  
27 industrial dischargers—had instead been charged to and collected from the putative Class.

28 //

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<sup>17</sup> 2020 Follow-Up Audit, pp. 44-47.

**D. The City continues to overcharge Residential & Commercial customers in violation of California law to offset chronic shortfalls in IWCP fees from industrial users.**

79. The City Auditor found in its 2013 Audit that the City was failing to collect adequate fees from industrial dischargers to fund the IWCP and instead charged excess fees to R&C customers to compensate for this ongoing failure.

80. The 2020 Audit found that “the issues we identified in 2013 remain largely unaddressed.”<sup>18</sup>

81. In its 2020 review, The City Auditor concluded that at least \$33.3 million of the property-related wastewater fees collected by SDPUD from Residential and Commercial customers between FY 2010 and FY 2019 were improper because Defendant used the \$33.3 million to subsidize the IWCP’s provisioning of utility services to industrial dischargers.

82. Among other findings, the City Auditor found in 2020 that “although City regulations and policies require fees to be regularly reviewed and updated, we found that many IWCP fees had not been updated since as far back as 1984.”<sup>19</sup>

83. From FY 2010 through FY 2019, IWCP costs of providing regulation and services to industrial discharger totaled approximately \$38.8 million.

84. Of those costs, only \$5.5 million, or 14%, were recovered by Defendant from industrial dischargers subject to IWCP permitting and regulation.

85. Defendant had passed the remaining \$33.3 million (86% of the IWCP’s costs) to other wastewater customers (i.e., the putative Class) through unlawfully excessive property-related fees and other charges.

86. The \$33.3 million in fees Defendant improperly collected from R&C customers between FY 2010 and FY 2019 constitute illegal fees under Prop 218 and related statutes, and under San Diego City Council Policy 100-05.

87. The City Auditor found in 2020 that “these cost recovery practices remain out of compliance with City regulations and policies” and that “more seriously, the possibility remains that, by passing on most program costs to other wastewater customers, the City may not be complying with Prop.

<sup>18</sup> *Id.*, pp. 3, 24-30.

<sup>19</sup> *Id.*, p. 3.

1 218.<sup>20</sup> (Emphasis added).

2 88. The City Auditor further found that these “subsidiaries” to the IWCP “came exclusively from  
3 San Diego [R&C] wastewater customers, even though IWCP serves the larger metro area” which includes  
4 additional wastewater service areas and authorities (see Table 1).

5 89. The 2020 Follow-Up Audit discovered that “[SD]PUD has again failed to bill many IWCP  
6 permittees [i.e., industrial dischargers] outside the City [of San Diego].”<sup>21</sup>

7 90. Because of SDPUD’s unlawful fee setting and negligent collection practices, Defendant  
8 has essentially forced R&C customers to subsidize select private industrial dischargers, both within the  
9 City of San Diego and in surrounding areas, for over a decade.

10 91. The 2020 Follow-Up Audit concluded that unless SDPUD quickly implemented  
11 significant corrective actions, the improper and unlawful fee collections practices were likely to continue  
12 as it had for well over a decade.

13 92. SDPUD’s wastewater fees charged to R&C customers in fact continue to violate  
14 Government Code Sections 54999.7 and 50076, and the California Constitution, as well as violate the  
15 express warranties and other terms of service promised by SDPUD to its R&C customers through  
16 SDPUD’s Customer Service webpages.

17 93. On March 25, 2021, the City announced that it was planning on modifying wastewater  
18 rates for all customers by a staged series of fee changes over fiscal years 2022–2025. These new  
19 wastewater rates were passed by the San Diego City Council and went into effect on January 1, 2022.<sup>22</sup>

20 94. “The [2021 Raftelis] cost of service study with the addendum is the final document used  
21 to calculate” the current wastewater rates.<sup>23</sup> The Addendum assumed that industrial ratepayers would  
22 only pay about \$0.23M of the IWCP’s annual costs of over \$4M.

23 95. The Raftelis 2021 study recommended that Defendant increase total collected IWCP  
24 permit fees by 13-fold from \$151,000/year (5-year average from FY2017 - FY 2021) to

25 <sup>20</sup> See Footnote 2, above.

26 <sup>21</sup> *2020 Follow-Up Audit*, p. 4.

27 <sup>22</sup> *See Sewer Billing Rates* (effective Jan 1, 2022), <https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/sewer>.

28 <sup>23</sup> *Public Utilities Rate Increase*, <https://www.sandiego.gov/public-utilities-/cusomer-service/water-and-sewer-rates/increase>.

1 \$2,070,000/year.<sup>24</sup>

2 96. This Raftelis study also recommended Defendant increase “notice of violation fees” from  
3 \$22,215 to \$664,599 per year, or 30-fold, and IWCP penalties levied on industrial dischargers from \$0  
4 to \$513,312 per year.<sup>25</sup>

5 97. Defendant’s current wastewater rates and charges will not compensate Plaintiffs nor the  
6 proposed Class for the years of illegal taxes nor for unlawful fees that the Defendant has collected from  
7 R&C customers since 2009.

8 98. This action therefore seeks to compel Defendant to cease assessing and collecting  
9 improper excess wastewater fees—which equate to illegal taxes under California’s Constitution—from  
10 the putative Class and to refund all such fees and taxes illegally collected from 2009 until the certification  
11 of the putative Class.

12 **VI. DELAYED DISCOVERY**

13 99. Plaintiff Allred did not discover until May 2021 that the fees he paid to the City for  
14 wastewater services were unlawful and were not being used solely to provide services directly available  
15 to his and putative Class members’ properties, but that Defendant used the fees to subsidize the IWCP’s  
16 operations.

17 100. Plaintiff Penley did not discover until June 2022 that the fees he paid to the City for  
18 wastewater services were unlawful and were not being used solely to provide services directly available  
19 to his and putative Class members’ properties, but that Defendant used the fees to subsidize the IWCP’s  
20 operations.

21 101. Plaintiffs are reasonably diligent consumers of public utility services who exercised  
22 reasonable care in monitoring and paying their SDPUD wastewater bills.

23 102. Nevertheless, they would not have been able to discover Defendant’s deceptive and  
24 unlawful practices and lacked the means to discover them given that, like nearly all public utility  
25 customers, they rely on and are entitled to rely on Defendant’s obligations to conduct its operations and

26 \_\_\_\_\_  
27 <sup>24</sup> *Addendum to the Final Report*, pp. 1-2 (Table 57).

28 <sup>25</sup> *Id.* Although SDPUD and the IWCP routinely find industrial dischargers are not in compliance with relevant law and regulations, the IWCP has rarely levied violation fees on offenders. *2020 Follow-Up Performance Audit*, pp. 12, 25.



1 impose fees on wastewater customers only in compliance with its published city policies, California law,  
2 and the California Constitution.

3 103. There was, and is, a tremendous disparity in information, knowledge, expertise, and power  
4 between Plaintiffs and Defendant. Plaintiffs have no reasonable way of knowing the actual cost for  
5 Defendant to provide its wastewater services nor that Defendant was using its wastewater fees to subsidize  
6 the IWCP who provides services not available to Plaintiffs and the putative Class. Defendant also wields  
7 a virtual monopoly in wastewater services over the utility service area controlled by Defendant.

8 104. Furthermore, Defendant's opaque practices and procedures impeded Plaintiffs' and the  
9 putative Class members' abilities and opportunities to discover Defendant's deceptive and unlawful  
10 practices throughout the Class Period.

11 105. Because Defendant actively concealed the illegal conduct, preventing Plaintiffs and the  
12 Class from discovering the contractual breaches and violations of the California Constitution and  
13 California statutes and municipal policies, Plaintiffs and the Class are entitled to delayed discovery and  
14 an extended Class Period tolling the applicable statute of limitations.

15 **VII. CLASS ACTION ALLEGATIONS**

16 106. Plaintiffs bring this action on behalf of themselves and all others similarly situated (the  
17 "Class") pursuant to California Civil Code Section 382.

18 107. The Class is defined as follows:

19 All San Diego SDPUD customers who paid bills assessed by the SDPUD for wastewater  
20 service provided to a residential or commercial account at an address within the City of  
21 San Diego, on or after January 1, 2009, and until the date the Class is certified by the  
22 Court, excluding Defendant and Defendant's officers, directors, employees, agents, and  
23 affiliates, and the Court and its staff.

24 108. During the Class Period, Defendant unlawfully imposed fees and taxes on Class members  
25 which Defendant used to subsidize the IWCP and industrial wastewater dischargers at the expense of  
26 R&C customers, in violation of the City's published and warranted user fee policy, state law, and the  
27 California Constitution.

28 109. Class members during the proposed Class Period paid these illegal taxes and fees and

1 incurred the same injuries as alleged herein for the Plaintiffs.

2 110. The proposed Class meets all criteria for a class action, including numerosity, typicality,  
3 superiority, and adequacy of representation; there is a well-defined community of interest in questions of  
4 law and fact common to the Class.

5 111. The proposed Class satisfies numerosity. R&C accounts active at one or more times over  
6 the proposed Class Period within the City of San Diego number in the hundreds of thousands. Individual  
7 joinder of the class members in this action is, therefore, impractical. Addressing the class members'  
8 claims through this class action will benefit Class members, the parties, and the courts.

9 112. The proposed Class satisfies typicality. Plaintiffs' claims are typical of and are not  
10 antagonistic to the claims of other Class members. Plaintiffs and the class members all paid San Diego  
11 SDPUD wastewater service bills which included the above-described excess and illegal taxes or fees and  
12 were deprived of money as a result.

13 113. The proposed Class satisfies superiority. A class action is superior to any other means for  
14 adjudication of the Class members' claims because each class member's claim is modest, with the mean  
15 damages estimated to be on the order of \$50-\$150. It would be impractical for individual class members  
16 to bring separate lawsuits to vindicate their claims. If this action is not brought as a class action, Defendant  
17 can continue to deceive wastewater customers, impose illegal fees and taxes, violate the California  
18 Constitution and related laws and government policies, and retain monies illegally collected from  
19 Plaintiffs and the putative Class.

20 114. Because Defendant's unlawful fees and taxes were collected from all R&C accounts  
21 included in the Class, all Class members including Plaintiffs were deceived and unlawfully billed.

22 115. The proposed Class representatives satisfy adequacy of representation. Plaintiffs are  
23 adequate representatives of the Class as they seek relief for the Class, their interests do not conflict with  
24 the interests of the Class members, and they have no interest incompatible with those of other class  
25 members. Plaintiffs have retained counsel competent in the prosecution of consumer fraud and class  
26 action litigation.

27 116. There is a well-defined community of interest in questions of law and fact common to the  
28 Class, and these predominate over any individual questions affecting individual Class members in this

1 action.

2 117. Questions of law and fact common to Plaintiffs and the Class include:

- 3 a. Whether Defendant failed to collect the full costs of the IWCP from  
4 industrial dischargers;
- 5 b. Whether Defendant charged excess fees to R&C customers in the City of  
6 San Diego to compensate for the resulting shortfall in IWCP funding from  
7 those dischargers subject to IWCP permitting and regulation;
- 8 c. Whether those excess fees collected from the Class constituted improper  
9 fees under San Diego City Council Policy 100-05;
- 10 d. Whether those excess fees collected from the Class constituted improper  
11 fees under California's Government Code;
- 12 e. Whether those excess fees collected from the Class violated the State of  
13 California's Constitution under Proposition 218 (Cal. Const., Art. XIII C &  
14 D);
- 15 f. Whether Defendant's conduct abridged Plaintiffs' and the Class's state  
16 constitutional rights;
- 17 g. Whether Defendant should be required to refund illegal taxes and fees  
18 collected from the Class to fund the IWCP;
- 19 h. Whether the statute of limitations should be tolled on behalf of the Class  
20 due to Defendant's deliberate and knowing deceptive conduct in concealing  
21 that it was imposing unlawful taxes and fees;
- 22 i. Whether Plaintiffs/Petitioners are entitled to a Writ of Mandate;
- 23 j. Whether Plaintiffs and the Class are entitled to restitution, rescission, actual  
24 damages, attorney fees and costs of suit, and injunctive relief; and
- 25 k. Whether members of the Class are entitled to any such further relief as the  
26 Court deems appropriate.

27 118. Class members lost money as a result of Defendant's unlawful behavior.

28 119. Further, Defendant has acted on grounds applicable to the entire Class, making final

1 declaratory or injunctive relief appropriate for the Class as a whole.

2 120. Class treatment is therefore appropriate for this Action.

3 **VIII. CAUSES OF ACTION**

4 **First Cause of Action: Petition for Writ of Mandate for Violations of the California Constitution**

5 121. Plaintiffs/Petitioners reallege and incorporate by reference each of the allegations made  
6 elsewhere in the Complaint as if set forth in full herein.

7 122. The City has mandatory duties to comply with the California Constitution, Article XIII D,  
8 Section 6(b), as compelled by Proposition 218.

9 123. Respondent also has mandatory duties under California Government Code Sections 50076  
10 and 54999.7 and San Diego City Council Policy 100-05.

11 124. Under those constitutional, statutory, and municipal policy provisions, Respondent is now  
12 and was at all times during the proposed Class Period required to assess on and collect from R&C  
13 customers only such fees for wastewater services as are necessary to offset the actual costs to provide  
14 wastewater services directly available to the putative Class's properties, and to use all monies collected  
15 exclusively to provide those services to R&C customers.

16 125. Respondent violated and continues to violate Proposition 218 and related California  
17 statutes and City Council Policy 100-05.

18 126. Respondent became aware, no later than the 2013 Audit of the IWCP, that the fees  
19 assessed to R&C customers included charges to offset IWCP costs Defendant failed to collect from  
20 industrial wastewater dischargers subject to IWCP regulation both within and outside the City of San  
21 Diego's geographic boundaries.

22 127. As a result of Respondent's violations of mandatory duties, Plaintiffs and the Class  
23 suffered and continue to suffer ascertainable losses in the form of the excess wastewater fees they paid  
24 and continue to pay, which they would not have paid if Defendant had complied with Proposition 218.

25 128. Petitioners have a present right to Respondent's compliance with the California  
26 Constitution and California state law, and therefore to Defendant's performance of its duties regarding  
27 fee-setting and billing for wastewater services.

28 129. Respondent's violations are continuing and these violations are knowing and willful in

1 that Defendant recently set new wastewater rates that assume that Respondent will continue to overcharge  
2 members of the putative Class for its wastewater services at least until Fiscal Year 2025.

3 130. Respondent has the power and ability to rectify these violations.

4 131. Plaintiffs therefore petition for a writ of mandate pursuant to California Code of Civil  
5 Procedure 1085 compelling Respondent to comply with these mandatory duties under the Prop 218 and  
6 related statutes and to reimburse Plaintiffs and the proposed Class for all fees unlawfully collected.

7 132. Plaintiffs and the proposed Class have no plain, speedy, and adequate remedy at law.

8 **Second Cause of Action: Violations of California Constitution – Unlawful Municipal Taxes and**  
9 **Fees**

10 133. Plaintiffs reallege and incorporate by reference each and every allegation contained  
11 elsewhere in this Complaint as if fully set forth herein.

12 134. Defendant's conduct violated the California Constitution, Article XIII C and D, because  
13 the excess fees that Defendant charged to and collected from Plaintiffs and the proposed Class for  
14 wastewater services provided to their properties were an illegal tax exceeding the cost to provide those  
15 services.

16 135. The fees Defendant charged Plaintiffs and the proposed Class further violate the California  
17 Constitution, Article XIII D, section 6, subdivision (b)(1-4), because those excess fees were used to  
18 compensate for monies uncollected from industrial dischargers served by the IWCP, a purpose other than  
19 the one for which those wastewater fees were collected from Residential and Commercial users.

20 136. Defendant's conduct further violated the California Constitution, Article XIII D, section  
21 6, subdivision (b)(3), because the fees that Defendant charged to and collected from Plaintiffs and the  
22 proposed Class for wastewater services at their properties were an illegal tax exceeding the proportional  
23 cost to provide those services attributable to the properties to which the fees were assessed and billed.

24 137. These constitutional violations are the direct result of Defendant's actions and may be  
25 redressed by Defendant's correction of those actions, retrospectively and prospectively.

26 138. This is an active controversy between the parties. Defendant unlawfully retain and  
27 continue to collect excess fees from the putative Class, in violation of the California Constitution.

28 139. Plaintiffs do not have an adequate remedy at law.

1 140. Plaintiffs therefore seek declaratory and injunctive relief.

2 141. Plaintiffs seek declaratory relief declaring the rights of and obligations the parties in this  
3 active conflict.

4 142. Plaintiffs seek a declaration that Defendant's imposition of excess wastewater fees, as  
5 described herein, violates Prop 218 and related California statutes.

6 143. Plaintiffs further seek injunctive relief to prevent Defendant from continuing to impose  
7 these unconstitutional and unlawful fees and seek restitution to return to Plaintiffs and the proposed Class  
8 all such fees illegally collected during the proposed Class period.

9 144. Unless enjoined by this Court, Defendant will continue to impose and collect unlawful  
10 fees from Plaintiffs and the proposed Class.

11 145. Plaintiffs and the proposed Class have sustained damages as a direct result of Defendant's  
12 constitutional violations.

13 146. The Court has the equitable power to return to Plaintiffs and the proposed Class all such  
14 monies unlawfully collected.

15 **Third Cause of Action: Money Had and Received**

16 147. Plaintiffs reallege and incorporate by reference the allegations made elsewhere in the  
17 Complaint as if set forth in full herein.

18 148. Defendant received excess monies from Plaintiffs and the Class as a result of improper  
19 fees and unlawful taxes assessed for property-related wastewater services in violation of the California  
20 Constitution and California state law.

21 149. Plaintiffs and the Class provided these monies in the reasonable belief that Defendant  
22 would only use these monies to provide wastewater services to Residential and Commercial customers.

23 150. Defendant, however, used these monies to fund the IWCP from which Plaintiffs and the  
24 Class and their real properties derive no immediate benefit.

25 151. Defendant benefitted from receipt of this money.

26 152. Defendant has not returned these excess monies to Plaintiffs and the Class.

27 153. As a result of Defendant's violations, Plaintiffs and the Class suffered ascertainable losses  
28 in the form of excess wastewater fees they paid for wastewater services to compensate for fees that

1 SDPUD improperly failed to collect from IWCP-regulated industrial dischargers.

2 154. Under principles of equity and good conscience, Defendant should not be permitted to  
3 retain this money.

4 155. Plaintiffs and the members of the Class are thus entitled to recover the funds they  
5 expended which Defendant used to subsidize IWCP services provided to industrial dischargers rather  
6 than to provide wastewater services to the Class.

7 **Fourth Cause of Action: Breach of Express Warranties**

8 156. Plaintiffs reallege and incorporate by reference the allegations found elsewhere in the  
9 Complaint as if set forth in full herein.

10 157. Defendant entered into written contracts with Plaintiffs and members of the putative Class  
11 for the provisioning of wastewater services. Defendant published the key terms of that agreement on  
12 SDPUD's Customer Service webpages. *See* Exhibit 2.

13 158. Defendant offered to provide Plaintiffs and the putative Class wastewater collection and  
14 treatment in exchange for monies and promises to honor Defendant's other terms of service.<sup>26</sup>

15 159. Defendant established the charges and fees and promises it required from Plaintiffs and  
16 the putative Class as Defendant's benefit of the bargain for providing the Class wastewater services and  
17 wrote and communicated the terms of the written agreements.<sup>27</sup>

18 160. Defendant proposed additional terms to its basic offer to provide wastewater services in  
19 exchange for monies.<sup>28</sup>

20 161. Defendant's offer included the responsibilities Defendant and Plaintiffs and the Class  
21 agreed to undertake regarding the wastewater collection system and the consequences for failing to honor  
22 these promises.<sup>29</sup>

23 \_\_\_\_\_  
24 <sup>26</sup> SDPUD, *Public Utilities Water and Wastewater Facilities*, <http://www.sandiego.gov/public-utilities/customer-service/water-and-wastewater-facilities>.

25 <sup>27</sup> SDPUD, *Public Utilities Sewer Billing Rates*, <https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/sewer>.

26 <sup>28</sup> SDPUD, *Public Utilities Policies and Procedures*, <https://www.sandiego.gov/public-utilities-customer-service/billing/policies>.

27 <sup>29</sup> SDPUD, *Public Utilities Your Sewer Plumbing System*, <https://www.sandiego.gov/public-utilities/customer-service/your-home-plumbing/sewer>.

1 162. Finally, Defendant stated how Plaintiffs, the putative Class, and other potential customers  
2 can accept its offer and start wastewater services, as well as how to terminate the agreement for the  
3 provisioning of wastewater services.<sup>30</sup>

4 163. Plaintiffs and all members of the putative Class accepted Defendant's offer to provide  
5 wastewater services by communicating their acceptance to SDPUD's Customer Service or other agents,  
6 thereby forming contracts.

7 164. Contract formation is also implied by the fact that Plaintiffs and the Class, over extended  
8 periods of time, provided Defendant payment, as calculated and billed by Defendant, in exchange for  
9 receiving Defendant's wastewater services.

10 165. Defendant warranted to Plaintiffs and the proposed Class, as a promise and statement of  
11 fact, that the fees charged to R&C customers would not exceed the actual cost of providing those services.  
12 These warranties became part of the contract and were a benefit of the bargain to which Plaintiffs and  
13 members of the putative Class are entitled.

14 166. Defendant expressly warranted that its "[s]ewer charges vary by customer class and have  
15 been developed to ensure that each class pays its proportionate share of operating, maintaining, repairing,  
16 and upgrading the sewer system."<sup>31</sup>

17 167. Defendant also expressly warranted that "[t]he Public Utilities Department is obligated to  
18 bill for all services provided."<sup>32</sup>

19 168. Defendant stated on its Customer Service webpages that it recognizes that Prop 218  
20 requires that "individual assessment charges, such as water and sewer rates, must be proportional to the  
21 share of the total cost for each customer. This means customers cannot be charged more than it costs the  
22 City to provide them with service. It also means we cannot subsidize service for customers."<sup>33</sup>

23  
24 <sup>30</sup> SDPUD, *Public Utilities Establishing or Canceling Service*, <https://www.sandiego.gov/public-utilities/customer-service/billing/service>.

25 <sup>31</sup> SDPUD, *Public Utilities Sewer Billing Rates*, <https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/sewer>.

26 <sup>32</sup> SDPUD, *Public Utilities Policies and Procedures*, <https://www.sandiego.gov/public-utilities/customer-service/billing/policies>

27 <sup>33</sup>SDPUD, *Water and Wastewater Rate Increases: Questions and Answers*,  
28 [https://www.sandiego.gov/sites/default/files/water\\_and\\_wastewater\\_rate\\_increases\\_faq.pdf](https://www.sandiego.gov/sites/default/files/water_and_wastewater_rate_increases_faq.pdf).



1 169. Finally, Defendant warranted that “[w]ater and wastewater services are full cost-  
2 recovery,” which reasonably means Defendant’s customers must pay for the full cost of the wastewater  
3 and IWCP services they receive.<sup>34</sup>

4 170. These written promises became part of the basis of the bargain between the parties and  
5 constitute express warranties.

6 171. It is not necessary for Defendant to have intended to create these express warranties.

7 172. As described herein, Defendant breached these express warranties. Since at least the 2013  
8 Audit of the IWCP, Defendant has knowingly, if not willfully, breached these express warranties.

9 173. Defendant breached an express warranty by charging Plaintiffs and the Class more for  
10 wastewater services than it cost Defendant to provide.

11 174. Defendant breached an express warranty by charging Plaintiffs and the Class fees that  
12 exceeded the proportionate cost of providing wastewater services available to properties owned by  
13 Plaintiffs and the Class.

14 175. Defendant breached an express warranty by billing industrial dischargers located in the  
15 City of San Diego only about 15% of the cost of services provided to them by the IWCP and by failing  
16 completely to bill many industrial dischargers whose properties are located outside the City of San  
17 Diego’s municipal boundaries.<sup>35</sup>

18 176. Defendant breached an express warranty by using wastewater fees paid by Plaintiffs and  
19 the Class to subsidize the IWCP and the industrial dischargers to whom the IWCP provides services.

20 177. Finally, Defendant breached an express warranty to honor its acknowledged fiduciary  
21 responsibilities toward the use of money paid by Plaintiffs and the putative Class by charging the Class  
22 excess fees to subsidize 85% of the IWCP’s costs since 2009, in violation of California’s Constitution  
23 and statutes and San Diego City Council Policy 100-05.

24 178. Plaintiffs and the Class did not receive the benefit of the bargain they made with  
25 Defendant for wastewater services because Defendant consistently charged them fees for wastewater  
26

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27 <sup>34</sup> *Id.*

28 <sup>35</sup> *Follow-Up Performance Audit*, pp. 2-4.

1 services that exceed the cost to provide those services.

2 179. Plaintiffs took reasonable steps to notify Defendant within a reasonable time after  
3 discovering Defendant's unlawful behavior that the fees charged were not as Defendant represented and  
4 expressly warranted in the terms of wastewater services Defendant published on its Customer Service  
5 webpages.

6 180. Defendant actually received such notice.

7 181. Defendant has failed to honor its express warranties or remedy the excessive fees it  
8 charged over the Class Period.

9 182. Plaintiffs and the Class were harmed and continue to be harmed thereby.

10 183. Defendant's failure to abide by its warranties for wastewater rate setting and billing was  
11 a substantial factor in causing Plaintiffs' harm.

12 184. As a proximate result of Defendant's breach of warranties, Plaintiffs and the Class have  
13 been damaged in an amount to be determined at trial.

14 185. Plaintiffs and the Class are entitled to injunctive and equitable relief, restitution, and an  
15 order for the disgorgement of the funds by which Defendant were unjustly enriched.

16 **Fifth Cause of Action: Breach of Implied Covenant of Good Faith and Fair Dealing**

17 186. Plaintiffs reallege and incorporate the allegations made elsewhere in the Complaint as if  
18 set forth in full herein.

19 187. Plaintiffs and the Class entered into a written contract with Defendant for wastewater  
20 services. *See* Exhibit 2.

21 188. Additionally, implied-in-fact or implied-by-conduct contracts were formed between  
22 Defendant and Plaintiffs and the Class when, over extended periods of time, Defendant collected and  
23 treated the Class's wastewater in exchange for Class members paying Defendant for these wastewater  
24 services and abiding by Defendant's other wastewater terms of service.

25 189. Each contract in California includes an implied covenant of good faith and fair dealing  
26 which supplements express contractual covenants and other promises of the contracting parties.

27 190. This implied covenant, made by all parties, means that each party will not do anything to  
28 unfairly interfere with the right of any party to receive the benefits of the contract for which they

1 bargained.

2 191. In California, “good faith” means honesty of purpose without any intention to mislead or  
3 to take unfair advantage of another. In general, good faith means being faithful to one’s duties or  
4 obligations.

5 192. “Good faith and fair dealing” also means that parties will not violate laws or regulations  
6 which protect or otherwise touch upon the rights of the contractual parties.

7 193. Plaintiffs and members of the putative Class performed their duties as established by the  
8 contracts they made with Defendant for wastewater services or were excused from performing their  
9 contractual promises.

10 194. All conditions required for Defendant’s honoring of the implied covenant of good faith  
11 and fair dealing had been met when Defendant breached this covenant by charging Plaintiffs and the  
12 Class more for wastewater services than the services cost Defendant to provide.

13 195. Defendant’s implied duty not to overcharge Plaintiffs and the Class for wastewater  
14 services as part of the benefit of the bargain is not inconsistent with any express terms in the contract  
15 between the parties to this action.

16 196. In fact, Defendant made express warranties and otherwise communicated its duties, under  
17 Prop 218 and related sections of the California Government Code, not to charge SDPUD’s customers  
18 more for wastewater service “than it costs the City to provide them with the service” and that Defendant  
19 “cannot subsidize service for [wastewater] customers.”<sup>36</sup>

20 197. Defendant wields an asymmetric advantage in information, expertise, and political and  
21 administrative power over Plaintiffs and the Class regarding the setting of wastewater rates and IWCP  
22 permit fees and have a superior capacity to determine if those rates and fees are in compliance with  
23 California law and San Diego City Council policies.

24 198. Defendant possesses almost unfettered discretionary power affecting the rights and  
25 benefits for which Plaintiffs and the putative Class bargained and contracted for, especially regarding  
26 how much SDPUD customers must pay for wastewater services.

27 199. Defendant has an almost unilateral power to amend the core of the contract it made with  
28

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<sup>36</sup> *Water and Wastewater Rate Increases: Questions and Answers.*

1 Plaintiffs and the Class by modifying wastewater rates and related fees.

2 200. For at least the last decade, Defendant knowingly breached this implied covenant because  
3 the CITY AUDITOR placed Defendant on notice in 2013 that it was using fees paid by R&C customers  
4 to fund 85% of the IWCP's costs. The 2020 Follow-Up Audit found Defendant had done essentially  
5 nothing to remedy its overcharging of the putative Class and had made little progress in implementing  
6 the recommendations made in its 2013 Audit so that Defendant comply with Prop 218 and related statutes  
7 and government policies.

8 201. Defendant breached this covenant because it was objectively unreasonable, once it was  
9 made aware of its unlawful behavior by the 2013 Audit, not to stop overcharging R&C customers for  
10 wastewater services and equally unreasonable to establish new wastewater rates in January 1, 2022 based  
11 on the explicit assumption that Defendant will use wastewater fees paid by Plaintiffs and the Class to  
12 subsidize a portion of the IWCP's costs until at least the middle of FY 2025.

13 202. Defendant also acted in bad faith by violating Prop 218 and related California statutes and  
14 City of San Diego City Council Policy 100-05 which all were designed and implemented to protect  
15 Plaintiffs and the Class from being charged more for government utility services than the services cost  
16 to provide.

17 203. It is reasonable for the Class to expect that part of the benefit of the bargain they struck  
18 when contracting for municipal wastewater services is that the municipality knows and will comply with  
19 relevant California laws, regulations, and government policies, especially when Defendant  
20 communicated to the Class it was aware of its duty to comply with these restrictions on rate-making and  
21 billing for wastewater services.

22 204. Defendant misled Plaintiffs and the Class by making express warranties and other  
23 representations that it would only charge for the cost of wastewater services actually provided to Class  
24 members' properties while knowing, since no later than 2013, that it was overcharging the Class in order  
25 to fill a chronic shortfall in IWCP funding collected from industrial dischargers.

26 205. Defendant did not act fairly and in good faith toward Plaintiffs and the putative Class  
27 because Defendant took unfair advantage of its superior knowledge, expertise, and political and  
28 administrative power when knowingly committing acts and omissions which resulted in Plaintiffs and

1 the Class paying more for wastewater services than they reasonably expected to pay.

2 206. Within a reasonable amount of time after Plaintiffs discovered the breach of this implied  
3 covenant, Plaintiffs notified the City of the breach.

4 207. Since 2009, Plaintiffs and the Class have suffered a total of at least \$40 million in damages  
5 from Defendant's breach of this implied covenant. The damages continue to accumulate.

6 208. As a proximate result of the breach of this implied covenant, Plaintiffs and other Class  
7 members have been damaged in an actual amount to be determined at trial.

8 209. As a result, Plaintiffs and the Class are entitled to injunctive and equitable relief,  
9 restitution, and an order for the disgorgement of the funds which Defendant unlawfully collected from  
10 the Class.

11 **Sixth Cause of Action: Negligence**

12 210. Plaintiffs reallege and incorporate the allegations made elsewhere in the Complaint as if  
13 set forth in full herein.

14 211. Defendant had throughout the proposed Class period and currently has mandatory duties  
15 to Plaintiffs and the putative Class to assess, bill, and collect only such fees for wastewater services as  
16 are required to deliver those services to its properties.

17 212. "Property-related service" means a public service having a direct relationship to property  
18 ownership. Cal. Const., Art. XIII D, § 2, subd. (h).

19 213. Wastewater services and IWCP services are property-relates services within the meaning  
20 of Proposition 218.

21 214. Defendant's charges for wastewater services are "fees" within the meaning of Proposition  
22 218. *See* Cal. Const., Art. XIII D, § 2, subd. (e).

23 215. Proposition 218 establishes a mandatory duty that Defendant shall not levy fees or collect  
24 revenue for property-related services that "exceed the funds required to provide the property-related  
25 service." Cal. Const., Art. XIII D, § 6, subd. (b)(1).

26 216. Proposition 218 establishes a mandatory duty on Defendant that "[r]evenues derived from  
27 the fee or charge [for a property-related service] shall not be used for any purpose other than that for  
28 which the fee or charge was imposed." Cal. Const., Art. XIII D, § 6, subd. (b)(2).

1           217. Proposition 218 establishes a mandatory duty on Defendant that “[t]he amount of a fee or  
2 a charge [they impose] upon any parcel or person as an incident of property ownership shall not exceed  
3 the proportional cost of the service attributable to the parcel.” Cal. Const., Art. XIII D, § 6, subd. (b)(3).

4           218. Finally, Proposition 218 establishes a mandatory duty on Defendant not to impose a fee  
5 or charge “for a service unless that service is actually used by, or immediately available to, the owner of  
6 the property in question. Fees or charges based on potential or future use of a service are not permitted.”  
7 Cal. Const., Art. XIII D, § 6, subd. (b)(4).

8           219. California Government Code Section 54999.7 establishes a mandatory duty that  
9 Defendant only assess fees for wastewater services that are proportional to the cost to provide those  
10 services.

11           220. California Government Code Section 54999.7 also establishes a mandatory duty that  
12 Defendant levy wastewater fees that do not exceed the reasonable cost of providing wastewater services.

13           221. In addition to Constitutional and statutory duties, San Diego City Council Policy  
14 establishes duties on Defendant to ensure charges for all wastewater system users are “proportional to  
15 the costs associated with providing the service” and that wastewater fees be “annually adjusted to  
16 maintain the [required] cost recovery level.” San Diego Council Policy 100-05: *User Fee Policy*, March  
17 20, 2009, pp. 4-5.

18           222. San Diego Council Policy 100-05 also establishes a mandatory duty to achieve 100% cost  
19 recovery from users benefiting from a service unless: (1) “the collection of fees is not cost-effective”; (2)  
20 “the collection of fees would not comply with regulatory requirements”; and (3) “the purpose of the fees  
21 is not to generate revenue but rather provide benefits to the recipients (e.g., recreational activities).” *Id.*,  
22 pp. 3-4.<sup>37</sup>

23           223. The collection of 100% of IWCP’s costs from the industrial users the IWCP uniquely  
24 serves is required by Council Policy 100-05 because the collection of 100% of the fees is: “cost-  
25 effective” (the average industrial discharger is underpaying about \$3000/year for IWCP services);  
26 complies with, and is actually required by, “regulatory requirements” and California law; and because  
27 the purpose of IWCP permit, regulatory violation, and other IWCP fees are designed not to generate  
28

---

<sup>37</sup> CP-100-05, available at [https://docs.sandiego.gov/councilpolicies/cpd\\_100-05.pdf](https://docs.sandiego.gov/councilpolicies/cpd_100-05.pdf).

1 general revenue but to pay for the benefits IWCP services provide to industrial dischargers.

2 224. San Diego Council Policy 100-05 establishes that the City “shall . . . annually adjust[]”  
3 user fees “to maintain the cost recovery level” required by this policy or other laws or regulations. City  
4 of San Diego Council Policy 100-05: *User Fee Policy*, March 20, 2009, pp. 4-5.

5 225. San Diego Council Resolution No. 260133, passed on March 1, 1984, “states that the fees  
6 [from IWCP permits] should recover PUD’s costs for inspecting, monitoring, and sampling [industrial]  
7 permitted facilities.”<sup>38</sup>

8 226. Finally, San Diego Municipal Code Section 64.0508 states that IWCP permit fees “should  
9 be established periodically by resolution of the City Council.”<sup>39</sup>

10 227. All of the mandatory duties, described herein, are designed and intended to protect those  
11 receiving property-related government services in California from the damages alleged by Plaintiffs and  
12 the putative Class.

13 228. Defendant acknowledged and communicated to its wastewater customers that Prop 218  
14 and related statutes establishing these mandatory duties apply to it by stating these constitutional  
15 provisions and statutes “dictate[] that individual assessment charges, such as water and sewer rates, must  
16 be proportional to the share of the total costs for each customer. This means customers cannot be charged  
17 more than it costs the City to provide them with [water and wastewater] service. It also means we cannot  
18 subsidize service for customers.”<sup>40</sup> (Emphasis added).

19 229. Defendant also acknowledged its duties under Prop 218 on its Customer Services  
20 webpages to develop wastewater rates “to ensure that each class pays its proportionate share of operating,  
21 maintaining, repairing, and upgrading the sewer system” and that “[t]he Public Utilities Department is  
22 obligated to bill for all services provided.”<sup>41</sup>

23 230. Defendant breached these mandatory duties when it assessed on and collected from  
24 Plaintiffs and proposed Class members wastewater fees that were greater than or not otherwise

25 <sup>38</sup> 2013 Audit, p. 7.

26 <sup>39</sup> *Id.*

27 <sup>40</sup> SDPUD, Public Utilities Department, *Water and Wastewater Rate Increases: Questions and Answers*,  
available at [https://www.sandiego.gov/sites/default/files/water\\_and\\_wastewater\\_rate\\_increases\\_fa.pdf](https://www.sandiego.gov/sites/default/files/water_and_wastewater_rate_increases_fa.pdf).

28 <sup>41</sup> *Public Utilities Policies and Procedures*.

1 proportional to the cost to provide these property-related services.

2 231. Defendant breached these duties when it collected only about 15% of the IWCP's costs  
3 from IWCP-regulated industrial discharger over the Class Period and used wastewater fees paid by  
4 Plaintiffs and the Class to fund the remaining 85% of the IWCP's costs.

5 232. Defendant breached these duties when it failed to take reasonable and timely action, as  
6 recommended in multiple performance audits of the IWCP by the CITY AUDITOR, to increase permit  
7 and other fees levied on industrial dischargers in order that those subject to IWCP regulation pay 100%  
8 of the IWCP's costs since the IWCP provided utility services uniquely to industrial dischargers.

9 233. Defendant further breached these duties when it countermanded the initial  
10 recommendations made by Raftelis in its 2021 Wastewater Financial Plan, Cost of Service, and Rate  
11 Study to immediately and significantly increase the monies collected from industrial dischargers through  
12 IWCP permit and violation fees, and instead implemented wastewater rates which assume members of  
13 the putative Class will continue to pay a significant portion of the IWCP's costs until FY 2025.

14 234. Defendant breached Council Policy 100-05 because it did not, as required by the duties  
15 set by that policy, collect 100% of IWCP's costs from industrial dischargers who are the sole beneficiaries  
16 of IWCP services as defined by California's constitution.

17 235. Defendant also breached its duties under Council Policy 100-05 by failing to collect IWCP  
18 permit and other fees from industrial dischargers in proportion to the cost of services these wastewater  
19 dischargers received from the IWCP—fees which currently equal only 5% of the IWCP's costs—and by  
20 not adjusting wastewater and IWCP fees on an annual basis to maintain required cost recovery levels.  
21 Many IWCP permit fees have not been updated for four decades.

22 236. Prior to 2021, Defendant had breached its mandatory duties by not updating wastewater  
23 rates nor even completing any formal wastewater cost of service and rate studies in a decade to support  
24 rate modifications despite being placed on notice in 2013 that Defendant was overcharging the Class in  
25 order to subsidize the IWCP.

26 237. Finally, Defendant breached its mandatory duties by not increasing the cost of many  
27 IWCP permits for industrial dischargers since the 1980s and failing to collect any permit fees from many  
28 industrial dischargers subject to IWCP regulation located outside the City of San Diego's boundaries.



1 238. Plaintiffs and the putative Class have already suffered damages in excess of \$40 million  
2 because Defendant breached its mandatory duties and failed to collect more than about 15% of the  
3 IWCP's costs from industrial dischargers served by the IWCP and filled that deficit—amounting to over  
4 \$3M per year—with wastewater fees paid by the putative Class.

5 239. Defendant's breaches of these duties were the proximate or substantial causes of those  
6 damages.

7 240. Plaintiffs and the putative Class are therefore entitled to the return of all excess wastewater  
8 fees Defendant collected from them as damages proximately resulting from Defendant's negligence.

9 **IX. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for  
11 judgment against Defendant as follows:

- 12 A. An order declaring that the conduct complained of herein violates California Constitution;  
13 B. An order declaring that the conduct complained of herein violates California state law;  
14 C. An order declaring that the conduct complained of herein violates Defendant's express  
15 written rate-setting policy and express warranties;  
16 D. An order issuing a Writ of Mandate as requested herein;  
17 E. An order certifying that this action is properly maintainable as a class action as defined  
18 above, appointing Plaintiffs and their undersigned counsel to represent the Class, and  
19 requiring Defendant to bear the cost of class notice;  
20 F. An order permanently enjoining the City's unlawful and improper wastewater fee  
21 collection practices;  
22 G. An order requiring Defendant to disgorge any benefits received from Plaintiffs and the  
23 Class and any unjust enrichment realized as a result of the illegal taxes or improper fees;  
24 H. An order requiring Defendant to pay restitution to Plaintiffs and Class members so that  
25 they may be restored any money which was acquired by means of any illegal, unfair,  
26 deceptive, unconscionable or negligent acts;  
27 I. An order finding that Defendant's conduct in charging excess fees was negligent with  
28 respect to Plaintiffs and the Class;

- 1 J. An order finding that Defendant's breached its implied duty of good faith and fair dealing  
2 to Plaintiffs and the Class;
- 3 K. An order requiring the City to inform Class members about the conduct described herein;
- 4 L. An order finding that this proceeding is brought in the public interest to vindicate  
5 important public rights and for the broad benefit of residents of San Diego who directly  
6 or indirectly pay for residential or commercial wastewater services.
- 7 M. An award of attorney fees, pursuant to California Code of Civil Procedure section 1021.5  
8 or the Court's inherent powers, and costs;
- 9 N. An award of pre-judgment and post-judgment interest; and
- 10 O. Such other and further relief as this Court may deem just, equitable, or proper.

11 **X. JURY DEMAND**

12 Plaintiffs demand a trial by jury on all claims for damages. Plaintiffs do not seek a jury trial for  
13 claims sounding in equity.

14 DATED: August 9, 2022

15 Respectfully Submitted,

16  
17 /s/ Ronald A. Marron

18 **THE LAW OFFICES OF**  
19 **RONALD A. MARRON**  
20 RONALD A. MARRON  
21 MICHAEL T. HOUCHIN  
22 LILACH HALPERIN  
23 651 Arroyo Drive  
24 San Diego, California 92103  
25 Telephone: (619) 696-9006  
26 Facsimile: (619) 564-6665

27 **ELLIOT LAW OFFICE, PC**  
28 DAVID ELLIOT (270381)  
MICHAEL DOBBS (342582)  
2028 Third Avenue  
San Diego, CA 92101  
Telephone: (619) 468-4865

*Counsel for Plaintiffs*

1 VERIFICATION

2  
3 I, BARRY ALLRED, am the Petitioner/Plaintiff in this action.

4 I have read the above Petition For Writ Of Mandate and Class Action Complaint and believe the  
5 allegations in that Petition and Complaint to be true of my own knowledge based on investigation of  
6 counsel, except matters stated on information and belief, and as to them I believe them to be true. I  
7 declare under penalty of perjury that the foregoing is true.

8  
9 Executed in San Diego, California on 7/19/2021

10 

11  
12 Barry Allred

1 VERIFICATION

2  
3 I, BRAD PENLEY, am a Petitioner/Plaintiff in this action.

4 I have read the above Petition For Writ Of Mandate and Class Action Complaint and believe the  
5 allegations in that Petition and Complaint to be true of my own knowledge based on investigation of  
6 counsel, except matters stated on information and belief, and as to them I believe them to be true. I  
7 declare under penalty of perjury that the foregoing is true.

8  
9 Executed in San Diego, California on August 1, 2022

10  
11 

12 Brad Penley

# **EXHIBIT 1**

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# **FOLLOW-UP PERFORMANCE AUDIT OF THE PUBLIC UTILITIES DEPARTMENT'S INDUSTRIAL WASTEWATER CONTROL PROGRAM**

The Public Utilities Department's  
Cost Recovery Practices Remain Out  
of Compliance with City Regulations  
and Policies and Possibly State Law

Office of the  
City Auditor

City of San Diego



Independent • Objective • Accurate

## Follow-Up Performance Audit of the Industrial Wastewater Control Program

*The Public Utilities Department's Cost Recovery Practices for IWCP Remain Out of Compliance with City Policies and Possibly State Law*

### Why OCA Did This Study

The Public Utilities Department's (PUD) Industrial Wastewater Control Program (IWCP) permits, monitors, and inspects a variety of industries across the City and 12 other Participating Agencies to detect and minimize the discharge of toxic substances into the sewerage system.

In 2013, we issued a [performance audit of IWCP](#). At that time, we found that outdated fees, billing lapses, and inadequate controls limited program cost recovery from IWCP permittees. Most program costs were passed on to other wastewater customers who were not IWCP permittees. In addition, we issued a confidential memorandum raising the possibility that these cost recovery practices were not in compliance with Proposition 218 (Prop 218).<sup>1</sup> The objective of the current audit was to review the status of the recommendations we made in 2013.

### What OCA Found

We found that the issues we identified in 2013 remain largely unaddressed.

**Finding 1:** While an IWCP fee update is in progress, it has not been completed, and many program fees remain unadjusted since 1984. As a result, from FY 2010 to FY 2019, program costs totaled about \$38.8 million, of which only \$5.5 million (14 percent) was recovered from fees charged to IWCP permittees. The remaining \$33.3 million (86 percent) was passed on to other customers via wastewater rates. By not regularly reviewing IWCP fees and presenting them to the City Council for approval, PUD's IWCP cost recovery practices remain out of compliance with City regulations and policies. In addition, the continuance of these practices again raises the possibility of non-compliance with Prop 218.<sup>1</sup>

**Finding 2:** PUD continues to use overly-complex billing processes for IWCP, which is inefficient and has caused billing lapses. Even though PUD implemented our 2013 recommendation to recover unbilled costs from FY 2008 to FY 2012, we found that, since FY 2017, PUD has again failed to bill many IWCP permittees outside the City.



Source: U.S. Environmental Protection Agency

### What OCA Recommends

We make a total of 9 recommendations to correct the issues we identified, which are similar to the public and confidential recommendations we made in 2013.

Specifically, we recommend that PUD:

- Document procedures to track IWCP costs and revenues;
- Complete the current IWCP fee study, consult with the City Attorney's Office to develop a fee proposal that is in compliance with City regulations, policies, and state law, and present the proposal to the City Council for approval;
- Document policies and procedures for periodically reviewing and updating IWCP fees moving forward;
- Consolidate and simplify the billing process for IWCP fees; and
- Seek recovery of IWCP fees that went unbilled since FY 2017.

PUD agreed with all 9 recommendations and has taken several steps towards implementation.

For more information, contact Kyle Elser, Interim City Auditor at (619) 533-3165 or [cityauditor@sandiego.gov](mailto:cityauditor@sandiego.gov)

<sup>1</sup> We do not reach any legal conclusions in our report regarding Proposition 218, and nothing in our report should be interpreted as any type of legal conclusion.



## THE CITY OF SAN DIEGO

July 15, 2020

Honorable Mayor, City Council, and Audit Committee Members  
City of San Diego, California

Transmitted herewith is a follow-up performance audit report on the Public Utilities Department's Industrial Wastewater Control Program. This report was conducted in accordance with the City Auditor's Fiscal Year 2020 Audit Work Plan, and the report is presented in accordance with City Charter Section 39.2. The Results in Brief are presented on page 1. Audit Objectives, Scope, and Methodology are presented in Appendix B. Management's responses to our audit recommendations are presented after page 49 of this report.

We would like to thank staff from the Public Utilities Department and the City Attorney's Office. All of their valuable time and efforts spent on providing us information is greatly appreciated. The audit staff members responsible for this audit report are Shadi Matar, Luis Briseño, Danielle Knighten, and Andy Hanau.

Respectfully submitted,

Kyle Elser  
Interim City Auditor

cc: Kris Michell, Chief Operating Officer  
Jeff Sturak, Assistant Chief Operating Officer  
Johnnie Perkins, Deputy Chief Operating Officer, Public Utilities/Infrastructure  
Shauna Lorange, Director, Public Utilities Department  
Juan Guerreiro, Interim Executive Assistant Director, Public Utilities Department  
Lisa Celaya, Assistant Director, Public Utilities Department  
John Stufflebean, Assistant Director, Public Utilities Department  
Peter Vroom, Deputy Director, Public Utilities Department  
Charles Modica, Deputy Director, Public Utilities Department  
Joy Newman, Program Manager, Industrial Wastewater Control Program  
Matthew Helm, Chief Compliance Officer  
Rolando Charvel, Chief Financial Officer  
Jessica Lawrence, Director of Policy and Council Affairs, Office of the Mayor  
Honorable City Attorney Mara Elliott  
Kenneth So, Deputy City Attorney  
Andrea Tevlin, Independent Budget Analyst

OFFICE OF THE CITY AUDITOR  
600 B STREET, SUITE 1350 • SAN DIEGO, CA 92101  
PHONE (619) 533-3165 • FAX (619) 533-3036

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# Results in Brief

The Public Utilities Department's (PUD) Industrial Wastewater Control Program (IWCP) represents a key element of the City of San Diego's (City) environmental management efforts. IWCP permits, monitors, and inspects a variety of industries across the City and 12 other Participating Agencies (PAs) to detect and minimize the discharge of toxic substances into the metropolitan sewerage system. The sewage is treated by the City's wastewater treatment plants before being discharged into the Pacific Ocean.

## Summary of Previous Audit Findings

In August 2013, we issued a public performance audit of IWCP that assessed the extent to which the program's permit and inspection fees and billing processes met legal requirements, achieved appropriate cost recovery, and ensured timely collection. We found that outdated fees, billing lapses, and inadequate controls limited program cost recovery.

Specifically, although City regulations and policies require fees to be regularly reviewed and updated, we found that many IWCP fees had not been updated since as far back as 1984. Moreover, PUD was not tracking program costs.<sup>1</sup> As a result, IWCP did not achieve adequate cost recovery. We estimated that between FY 2010 and FY 2012, billable costs exceeded revenues by about \$8.3 million—meaning that only 15 percent of billable costs were recovered through program fees charged to regulated businesses. The other 85 percent of costs were offset by charges to other ratepayers, including residential and commercial customers. In addition, we found that IWCP had not issued bills to many permittees for a five-year period, from FY 2008 to FY 2012, totaling \$850,000.

In addition to our public audit report, we raised additional legal concerns in a confidential memorandum to the Mayor,

---

<sup>1</sup> As reported in our August 2013 audit, PUD was not able to precisely determine recoverable program costs because it did not maintain sufficient data to do so and because a formal workload study to identify program costs had not been conducted.

PUD, and the City Attorney's Office in May 2013.<sup>2</sup> Specifically, the fact that the vast majority of program costs were being passed on to non-IWCP users via wastewater rates created the possibility that PUD's cost recovery practices were out of compliance with Proposition 218 (Prop 218).<sup>3</sup> Adopted by California voters in 1996, Prop 218 generally requires that "property related fees and charges"—including charges for water and sewer service—not exceed the cost of providing the service.

We made a total of 8 recommendations in our public audit and an additional 5 recommendations in our confidential memorandum to ensure that program costs are tracked; fees are regularly reviewed and updated; billing is timely; and cost recovery practices comply with City regulations and policies as well as state law. Since 2013, we have kept the Mayor, the City Council, and the Audit Committee informed of PUD's progress in implementing these recommendations via periodic recommendation follow-up reports. During this time, PUD only provided evidence to demonstrate that 3 of the 13 recommendations were fully implemented.<sup>4</sup>

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<sup>2</sup> This memorandum was issued confidentially because cost recovery at the time was unclear (because program costs were not being tracked); additional City analysis was needed to determine whether there was a risk of Prop 218 non-compliance; and because the memorandum contains sensitive and privileged information. While that memorandum remains confidential because it contains sensitive and privileged information, given the time that has passed and the new information that has become available, we have determined that it is in the public interest to raise the pertinent issues here so that management and oversight bodies can act to quickly and appropriately resolve them as needed. Any reference to the 2013 confidential memorandum is not intended in any way to waive the confidentiality of the report itself or to otherwise make the confidential report or any portion of it subject to disclosure.

<sup>3</sup> We do not reach any legal conclusions in this report regarding Proposition 218, and nothing in this report should be interpreted as any type of legal conclusion.

<sup>4</sup> OCA reports on the status of outstanding public audit recommendations on a six-month interval and reports on the status of outstanding confidential recommendations periodically, the most recent of which we completed in June 2019. During the follow-up process, OCA reviews information provided by management to determine whether a recommendation has been implemented.

**The Issues We Identified in 2013 Remain Largely Unaddressed, and PUD's Cost Recovery Practices Remain Out of Compliance With City Regulations and Policies and Possibly State Law**

Given the serious issues that were identified in 2013, and the apparent lack of progress in implementing our recommendations, we conducted this follow-up audit to evaluate the current state of PUD's cost recovery efforts for IWCP. Specifically, our audit objectives were to review the implementation status of our 2013 recommendations and publicly report on the issues we had identified in 2013 through both our public audit and our confidential audit memorandum.

We found that, while some progress has been made, the issues we identified in 2013 remain largely unaddressed. PUD began tracking IWCP costs in 2014 in an effort to facilitate an update to program fees. PUD has also commissioned several consultant fee studies, although two of these studies were cancelled after we identified methodological issues during our recommendation follow-up process, and none have yet been finalized and presented to the City Council for approval. A new fee study is nearing completion, and PUD plans to present the results to the City Council by January 2021. As a result, many fees still remain unadjusted since 1984, and program cost recovery remains very low. From FY 2010 through FY 2019, IWCP costs have totaled approximately \$38.8 million. Of these costs, only \$5.5 million (14 percent) was recovered from IWCP permittees while the remaining \$33.3 million (86 percent) was passed on to other wastewater customers, such as residential and commercial customers, via wastewater rates.

These cost recovery practices remain out of compliance with City regulations and policies. More seriously, the possibility remains that, by passing on most program costs to other wastewater customers, the City may not be complying with Prop 218.<sup>5</sup> We also identified an additional concern with Prop 218 compliance that is created by complexities in PUD's wastewater accounting and its agreement with regional PAs. Specifically, due to these complexities, the \$33.3 million needed to subsidize IWCP between FY 2010 and FY 2019 came

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<sup>5</sup> As previously noted, we do not reach any legal conclusions in this report regarding Proposition 218, and nothing in this report should be interpreted as any type of legal conclusion.

exclusively from City of San Diego wastewater customers, even though IWCP serves the larger metro area, including 12 PAs.

Additionally, even though PUD implemented our 2013 recommendation to recover the approximately \$850,000 in costs that went unbilled from FY 2008 to FY 2012,<sup>6</sup> we found that, since FY 2017, PUD again failed to bill many IWCP permittees outside the City. As in 2013, we found this was largely due to overly-complex and labor-intensive billing processes and a breakdown in billing oversight.

We make a total of 9 recommendations to address the issues identified above, which are similar to the public and confidential recommendations we made in 2013. Specifically, we recommend that PUD document its procedures to track IWCP costs and revenues; complete the current fee study and work with the City Attorney's Office to develop a fee proposal in compliance with City regulations, policies, and state law, and present these fees to the City Council for approval; document policies and procedures for periodically reviewing and updating fees moving forward; and consolidate and simplify its IWCP billing process. Management agreed to implement all 9 recommendations.

---

<sup>6</sup> Prior to the completion of our 2013 audit, PUD sent invoices for unbilled charges accrued during FY 2008 and FY 2009. Then, in our office's Audit Recommendation Follow-up Report for the period ending June 30, 2014, we verified that PUD invoiced for previously unbilled permits and monitoring services for FY 2010 through FY 2012, totaling about \$628,000.

# Background

The Public Utilities Department’s (PUD) Industrial Wastewater Control Program (IWCP) represents a key element of the City of San Diego’s (City) environmental management efforts. Implemented in 1982, IWCP is a pretreatment and pollution prevention program intended to minimize toxic discharges to the metropolitan sewerage system. To that end, IWCP operates an industrial wastewater discharge permit, monitoring, and enforcement system for the City and 12 other jurisdictions, referred to as Participating Agencies (PAs), within the County of San Diego. The sewage is treated by the City’s wastewater treatment plants before being discharged into the Pacific Ocean. IWCP’s budgeted staffing and expenses for recent years are summarized in **Exhibit 1**.

**Exhibit 1**

**Industrial Wastewater Control Program Budgeted Staffing and Expenses, 2017 – 2020**

	2017	2018	2019	2020
<b>Positions</b>	29	26	32	32
<b>Expenses</b>	\$3,814,965	\$3,356,631	\$3,971,596	\$3,971,596

Notes: Figures in the table reflect total budgeted staffing and expenses for all sections of the program (permits, enforcement, supportive services, and sampling). According to PUD, this does not include costs from the Environmental Chemistry Services section (ECS), which analyzes user samples for IWCP, because this is not a core ECS function. According to PUD, IWCP samples make up only about 6 percent of ECS’s total expenses.

Figures for 2017 through 2019 reflect information from PUD’s Annual Wastewater Pretreatment Program Reports, which is reported on a calendar year basis. Figures for 2020 reflect budget information from the City’s enterprise resource planning system, which is recorded on a fiscal year basis.

Source: Auditor generated based on information from PUD and the City’s enterprise resource planning system, SAP.

**IWCP Operational Focus** IWCP was created in July 1982 after being formally approved by the U.S. Environmental Protection Agency (EPA). IWCP applies and enforces federal pretreatment regulations set forth by the EPA pursuant to the Code of Federal Regulations<sup>7</sup> and the Clean Water Act. In addition, under state and federal regulations—and as described in the Point Loma Wastewater Treatment Plant’s NPDES<sup>8</sup> Permit—the City must implement the federal Industrial Pretreatment Program to control the discharges of all Significant Industrial Users (SIUs).<sup>9</sup> The NPDES Permit additionally requires the City to implement a non-industrial Source Control Program to regulate the discharge of toxic pollutants and pesticides into the system from non-industrial sources.

In general, IWCP’s primary focus is to minimize toxic discharges to the sewerage system. The program consists of:

1. An industrial wastewater discharge permit system to establish industrial discharge limits and requirements;
2. Periodic facility inspections and unannounced sampling;
3. Enforcement procedures to deter violations and bring noncompliant dischargers back into compliance with discharge standards and requirements; and

---

<sup>7</sup> Title 40, Part 403, 1981.

<sup>8</sup> Created in 1972 by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program is authorized to state governments by EPA to perform many permitting, administrative, and enforcement aspects of the program. NPDES addresses water pollution by regulating point sources that discharge pollutants to waters of the United States.

<sup>9</sup> According to PUD, SIUs are all industrial users that are subject to categorical pretreatment standards set forth in Title 40 of the Code of Federal Regulations, Chapter I, Subchapter N, Parts 405 - 471. The term “SIU” includes industrial users that: discharge an average of 25,000 gallons per day of process wastewater (excluding sanitary and “dilute wastewater,” as defined at 40 CFR 403.6 e(1)(i) under “FD”); contributes a process waste stream that makes up 5 percent or more of average dry weather hydraulic or organic capacity of the publicly-owned treatment works; or is determined to have reasonable potential for adversely affecting the publicly-owned treatment works’ operation or for violating any pretreatment standard or requirement.

4. Industrial user guidance and permit conditions designed to encourage pollution prevention and waste minimization.

**IWCP Industrial  
Wastewater Discharge  
Permits**

IWCP regulates various types of industries,<sup>10</sup> primarily by issuing a variety of permits to businesses based on industry type and amount of wastewater discharge.<sup>11</sup> According to the program's annual report, IWCP had an inventory of almost 900 active permits as of December 31, 2019. **Exhibit 2** below provides a breakdown of the number of SIU and non-SIU permits as of December 31, 2019 and an explanation of the associated permit types.

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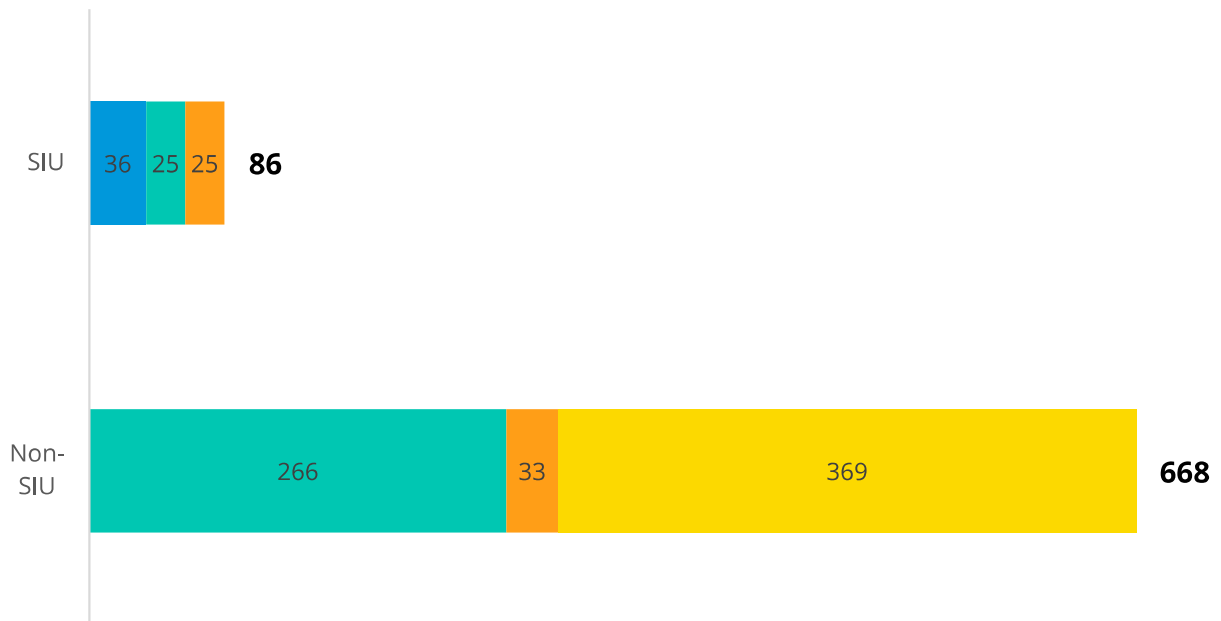
<sup>10</sup> These include aerospace manufacturing; metal forming, casting and finishing; pharmaceutical manufacturing; hospitals and medical centers; film processors; laundries and dry cleaners; and a variety of laboratories.

<sup>11</sup> [Exhibit 2 in the 2013 audit](#) summarizes IWCP's various permit types.



Exhibit 2

The Industrial Wastewater Control Program’s SIU and Non-SIU Permit Inventory as of December 31, 2019



Legend	Permit Classification	Permit Description
<span style="color: blue;">■</span>	Class 1	Issued to certain industries whose composition and amounts of discharge are subject to federal standards
<span style="color: teal;">■</span>	Class 2	Issued to targeted industrial sectors that have some toxic discharge, but are not subject to federal standards
<span style="color: orange;">■</span>	Class 3	Issued to targeted industrial sectors to regulate conventional pollutants
<span style="color: yellow;">■</span>	Best Management Practices (BMP)	These authorizations include requirements followed by a certification of compliance for management and discharge of silver-rich solutions or dry-cleaning solvents

Note: Trucked waste permits are excluded from the chart because these are not the main focus of IWCP’s regulation of industrial businesses through permitting, monitoring, and enforcement activities.

Source: Auditor generated based on information from PUD’s Point Loma Wastewater Treatment Plant’s 2019 Pretreatment Report.

In the past, IWCP’s primary focus was regulating SIUs, which are subject to stringent federal standards because of the potential risks these types of industries pose to the sewerage system and the environment. Accordingly, SIUs require

additional monitoring and routine sample testing. However, according to PUD management, IWCP has recently shifted resources to also focus on regulating non-SIU businesses through its Enhanced Source Control Program. This change is intended to assist in the City's implementation of the Pure Water program, since IWCP's activities are critical to protect source water quality for that program.<sup>12</sup>

**IWCP Jurisdictions**

IWCP's pretreatment program encompasses the metropolitan wastewater area; this includes not only the City, but also the unincorporated areas and the incorporated municipalities within San Diego County that utilize the City's wastewater treatment system. To regulate industries outside City limits, IWCP operates under the auspices of interjurisdictional pretreatment agreements (IJAs) between the City and each of the PAs in the County and in the incorporated municipalities. IJAs are important because they:

- Require PAs to promulgate ordinances that comport with federal standards and parallel City ordinances regarding pretreatment standards for waste discharge;
- Authorize the City, through IWCP, to permit, inspect, and monitor facilities in each of the PAs; and
- Establish permit and monitoring fees with the PAs to recover applicable IWCP costs associated with these activities.

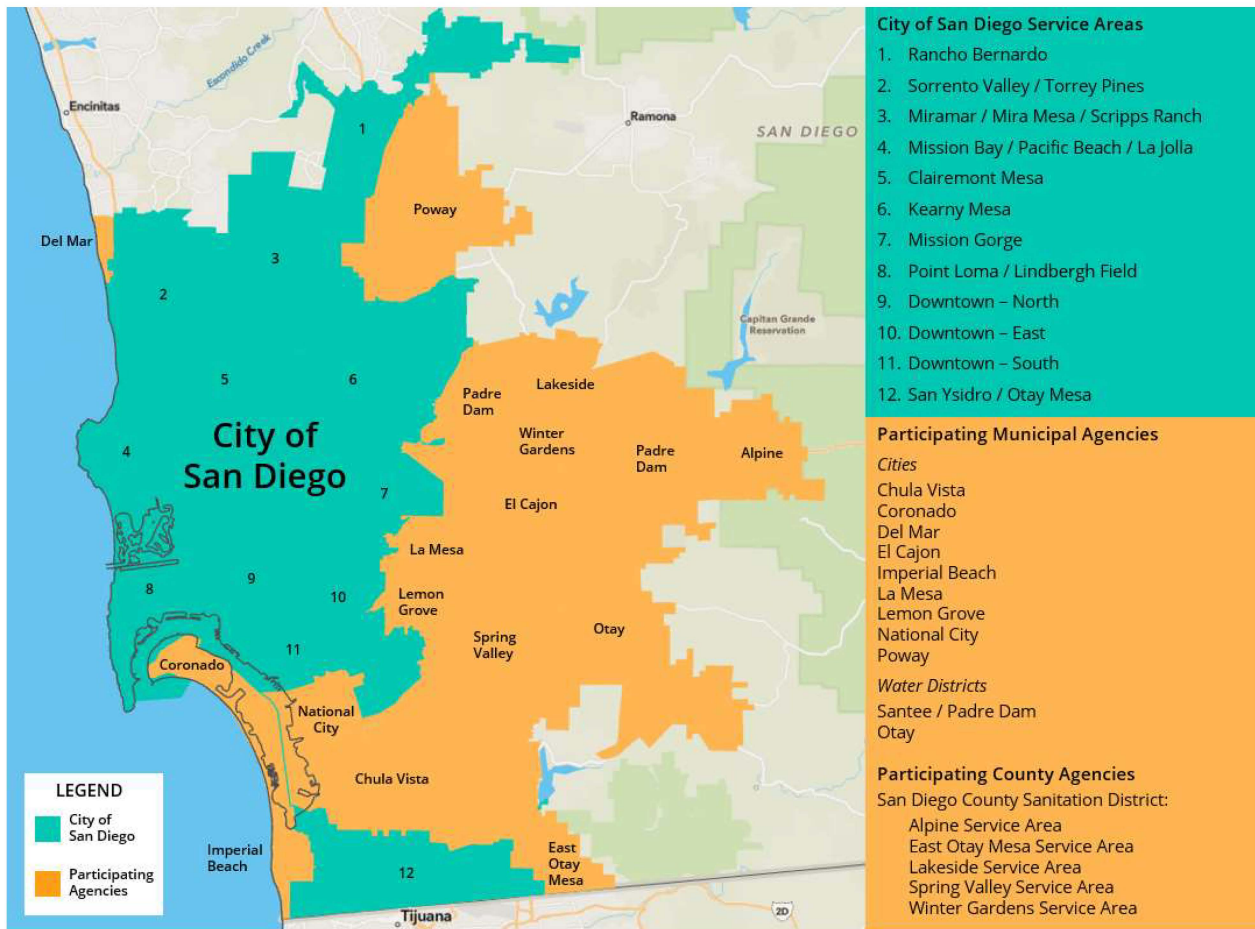
IWCP regulates industrial businesses located within the jurisdictions shown in **Exhibit 3**.

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<sup>12</sup> The City's phased, multi-year Pure Water program started in 2015 and is expected to provide one-third of San Diego's water supply when fully implemented by the end of 2035. Pure Water uses recycled water to produce a water supply and reduce wastewater discharge into the ocean.

Exhibit 3

The Industrial Wastewater Control Program’s Service Area Extends Beyond the City of San Diego



Note: Labels are approximate.

According to PUD, the service areas listed under “Participating County Agencies” were previously separate sewer districts. In July 2011, those entities were incorporated into the newly formed San Diego County Sanitation District. Therefore, these service areas are considered part of a single Participating Agency, the San Diego County Sanitation District.

Source: Auditor generated based on SanGIS data and information from PUD.

Most businesses regulated by IWCP are located within the City, but about one-third of them are spread across the PAs, as shown in **Exhibit 4**.

**Follow-up Performance Audit of the Industrial Wastewater Control Program**

**Exhibit 4**

**Number of Permittees per IWCP Service Area**

Area	Class 1	Class 2, 2C, 2Z	Class 3, 3C, 3Z	BMP	Total Permits	Total Percentage
<b>City of San Diego</b>	<b>22</b>	<b>227</b>	<b>48</b>	<b>213</b>	<b>510</b>	<b>67.6%</b>
City of Chula Vista	1	15	2	31	49	6.5%
City of Coronado	0	1	0	7	8	1.1%
City of Del Mar	0	0	1	2	3	0.4%
City of El Cajon	3	14	0	36	53	7.0%
City of Imperial Beach	0	0	0	4	4	0.5%
City of La Mesa	0	5	0	21	26	3.4%
City of National City	0	9	1	18	28	3.7%
City of Poway	4	4	3	11	22	2.9%
Santee / Padre Dam Municipal Water District	4	6	0	12	22	2.9%
City of Lemon Grove	0	2	0	5	7	0.9%
<b>Total Within Municipal PAs</b>	<b>12</b>	<b>56</b>	<b>7</b>	<b>147</b>	<b>222</b>	<b>29.4%</b>
Alpine Service Area	0	0	0	2	2	0.3%
Lakeside Service Area	0	4	1	3	8	1.1%
Spring Valley Service Area	1	2	1	4	8	1.1%
Winter Gardens Service Area	0	1	0	0	1	0.1%
East Otay Mesa Service Area	1	1	1	0	3	0.4%
<b>Total Within County PA</b>	<b>2</b>	<b>8</b>	<b>3</b>	<b>9</b>	<b>22</b>	<b>3.0%</b>
<b>Grand Total</b>	<b>36</b>	<b>291</b>	<b>58</b>	<b>369</b>	<b>754</b>	<b>100.0%</b>

Note: Trucked waste permits are not included in this table.

Source: Auditor generated based on 2019 Point Loma Pretreatment Report.

**IWCP Fees, Cost Recovery,  
and Enforcement**

San Diego Municipal Code Section 64.0508 states that Industrial Wastewater Discharge Permit Fees should be established periodically by resolution of the City Council. Accordingly, IWCP charges annual permit fees to regulated industries within the City. The IJAs establish the permit and monitoring fees within the PAs. Permit fees range from \$25 to \$3,180 per year and are based on the permit classification, amount of wastewater discharged, and various business characteristics, as well as where the business is located (City vs. PAs). Additionally, Council Resolution No. 260133, adopted

March 1, 1984, states that the fees should recover PUD's costs for inspecting, monitoring, and sampling permitted facilities.

IWCP also has a variety of enforcement mechanisms available. When a permittee violates discharge limits, an enforcement action is initiated through a Notice of Violation and additional sampling. IWCP bills violating industries directly to recover violation, sampling, and administrative fees. IWCP is also authorized to seek administrative civil penalties.

Billing arrangements for permit and monitoring fees vary by jurisdiction, as shown below in **Exhibit 5**.

Exhibit 5

Billing Arrangements for Permit and Monitoring Fees Vary by Jurisdiction

	City of San Diego	County Participating Agencies	Municipal Participating Agencies
<b>Fee Structure</b>	Flat Rate - Established by 1984 Council Resolution establishing IWCP permit fees	Line Item (Individual Charge for Each Activity) - Established in 1999 Agreements with County Agencies	Hourly - IWCP/IWL staff should track labor hours for each project, and PUD staff add overhead rates to generate invoice amounts
<b>Permit Fee Range</b>	\$25 to \$2,000 per year, based on class and flow	\$135 to \$3,180 per year, based on class, complexity, and whether self-monitoring is required	Varies based on labor hours charged
<b>Are the businesses billed directly?</b>	Yes	Yes	No
<b>Is the participating agency billed directly?</b>	N/A	No	Yes <sup>1</sup>
<b>Are SIUs billed for additional lab monitoring fees?</b>	No, because this cost is included in annual permit fee	Yes	Yes, but PUD does not track individual user costs
<b>Are non-SIUs billed for additional lab monitoring fees?</b>	No, because this cost is included in annual permit fee	Yes	Yes, but varies based on labor hours charged

<sup>1</sup> The City of Coronado bills industries directly and is therefore an exception.

Source: Auditor generated summary based on Interjurisdictional Pretreatment Agreements and IWCP information, as of May 20, 2020.

IWCP utilizes the Pretreatment Information Management System (PIMS) to administer information related to the inventory of permitted facilities. Specifically, IWCP uses PIMS to track Industrial User permit information; inspection, monitoring, and violation data; and to charge most IWCP fees. For businesses within the City and/or County PAs, fees charged in PIMS are automatically transferred to the Citywide financial system, SAP. For businesses within the Municipal PAs, violation fees are automatically transferred to SAP while fees for permitting and monitoring are manually entered in SAP. These differences are shown in **Exhibit 11**.

**Summary of Previous  
Audit Findings**

In August 2013, our office completed a performance audit of IWCP to assess the extent to which permit and inspection fees and billing processes met legal requirements, achieved appropriate cost recovery, and ensured timely collection. The audit found that outdated fees, billing lapses, and inadequate controls limited program cost recovery.

Specifically, IWCP fees were outdated—having not been updated since as far back as 1984. Moreover, program costs were not tracked.<sup>13</sup> As a result, IWCP did not achieve adequate cost recovery. We estimated that between FY 2010 and FY 2012, billable costs exceeded revenues by about \$8.3 million—meaning that only 15 percent of billable costs were recovered through program fees charged to regulated businesses. The other 85 percent of costs were offset by charges to other ratepayers, including residential and commercial customers.

IWCP's cost recovery level is ultimately a decision that should be made by the Mayor and the City Council, in accordance with San Diego Municipal Code Section 64.0508, Council Policy 100-05, and Administrative Regulation 95.25. However, because PUD never reviewed fees or prepared proposals to the City Council for updating them, these policymakers were likely not aware that IWCP was not recovering its costs through permit fees.

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<sup>13</sup> As reported in our August 2013 audit, PUD was not able to precisely determine recoverable program costs because it did not maintain sufficient data to do so and because a formal workload study to identify program costs had not been conducted.

The first audit finding included five recommendations, summarized below:

1. Track all billable costs so that fees (cost recovery rates) can be determined.
2. Review fees annually and conduct detailed fee studies not less than every three years; present fee proposals to the City Council.
3. Conduct a fee study to determine fee levels for full cost recovery; ensure fee calculation methodology meets applicable legal requirements.
4. Revise agreements with outside agencies to include fees that achieve cost recovery and mechanisms to adjust fees in response to changes in the cost of service.
5. Develop a proposal to update program fees within the City that achieve cost recovery and include mechanisms to adjust fees in response to changes in the cost of service.

In addition, the audit found that, in the five-year period between FY 2008 and FY 2012, PUD failed to invoice over \$850,000 to numerous regulated entities for IWCP services. This was primarily caused by unnecessarily complex billing processes, system programming errors, and a lack of established accountability for billing and review of financial information. Moreover, according to PUD, the failure to bill was caused by turnover in staff and initial confusion resulting from the implementation of the SAP financial system in FY 2010.

The second audit finding included three recommendations, summarized below:

6. Seek recovery of all unbilled costs related to IWCP activities.
7. Establish a centralized billing process and standardize billing policies and procedures across all IWCP activities.
8. Review all PIMS settings to ensure invoices are generated accurately and in a timely manner.



PUD originally agreed to implement all 8 recommendations by January 31, 2014.

**Our Confidential Memorandum Raised the Possibility that IWCP's Cost Recovery Practices Were Not in Compliance with Prop 218**

Prior to publishing our August 2013 audit, our office distributed a confidential audit memorandum to City management, the City Attorney's Office, and the Mayor in May 2013. While that memorandum remains confidential because it contains attorney-client privileged information, given the time that has passed and the new information that has become available, we have determined that it is in the public interest to raise the pertinent issues here so that management and oversight bodies can act to quickly and appropriately resolve them as needed. The confidential memorandum raised the same issues that were reported publicly in the August 2013 audit but went further by identifying the possibility that, by passing most costs on to other classes of users, IWCP was not in compliance with Proposition 218 (Prop 218).<sup>14</sup> Adopted by California voters in 1996, Prop 218 focuses on taxes, fees, or charges that are directly associated with property ownership; known as "property related fees and charges," these include charges for water and sewer service. Prop 218's rules generally require that rates not exceed the cost of providing the service and that rate proceeds be used only to provide the service. However, as reported in 2013, approximately 85 percent of IWCP costs were being passed on to other classes of users via sewer service charges—raising the possibility that IWCP's cost structure was not in compliance with Prop 218 requirements.

The 5 recommendations made in the confidential memorandum are similar to the 5 recommendations made in Finding 1 of the public audit, except they include ensuring that cost recovery practices also be reviewed for compliance with Prop 218. Following the issuance of our confidential audit memorandum in 2013, PUD worked to determine potential corrective measures related to these issues.

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<sup>14</sup> As previously noted, we do not reach any legal conclusions in this report regarding Proposition 218, and nothing in this report should be interpreted as any type of legal conclusion.

Our office issued the memorandum confidentially at the time because actual cost recovery was unclear (since program costs were not being tracked), because additional analysis would be required to determine a whether any corrective action was necessary, and because the memorandum contains attorney-client privileged information. We recommended that the City further study this issue and take corrective action if necessary. Since issuing the confidential memorandum and the public audit report, our office has kept the Mayor, the City Council, and the Audit Committee apprised of PUD's progress implementing the recommendations by periodically issuing recommendation follow-up reports.

**PUD Has Made Some Efforts to Address Previous Audit Recommendations, but Past Missteps Have Slowed Progress**

Since our 2013 audit, PUD has continuously been engaged in efforts to address substantive issues identified by the audit. However, at the time we initiated this follow-up audit, the City had fully implemented only 3 of a total of 13 recommendations made by our office in 2013.<sup>15</sup>

In FY 2014, PUD created a cost center specific to IWCP to better track program revenues and expenditures. However, the cost center still includes some line items that are unrelated to IWCP permitting, monitoring, and enforcement activities. Therefore, determining precise revenues and expenditures for these activities—which is necessary to understand what program fee levels would achieve cost

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<sup>15</sup> As of December 2019, the City had implemented 1 of the 8 recommendations made in the public audit report and 2 of the 5 recommendations made in the confidential audit memorandum.

The only recommendation that was implemented from the public report was Recommendation 6, which had to do with seeking recovery—to the greatest extent possible allowed by law—of all unbilled IWCP costs related to application review, permitting, inspection, and monitoring. Our 2013 audit found that PUD had not billed numerous regulated entities for IWCP services in the five-year period between FY 2008 and FY 2012 and that unbilled amounts totaled more than \$850,000. PUD sent invoices for unbilled charges accrued during FY 2008 and FY 2009 prior to the completion of our 2013 audit. Then, in our office's Audit Recommendation Follow-up Report for the period ending June 30, 2014, we reported that PUD had submitted evidence of having invoiced for previously unbilled permits and monitoring services for FY 2010 through FY 2012, totaling about \$628,000.

The two recommendations from the confidential audit memorandum that have been implemented pertain to delaying the Wastewater Cost of Service Study until additional analysis of IWCP's cost recovery practices is completed. Our office has verified that these recommendations have been implemented.

recovery—is still not as straightforward as we recommended in the audit report. Nevertheless, PUD has recently made progress toward developing and documenting a methodology to track program costs and revenues, which will be used in the future to update fees. This is discussed further in Finding 1.

*Although PUD Commissioned Several Fee Studies Since the Audit, They Were Never Finalized or Sent to the City Council for Approval in Accordance with City Policies and to Ensure Compliance with Proposition 218*

In April 2016, a consultant for PUD, Black & Veatch (B&V), completed a draft IWCP fee study, which found that IWCP fees would—in certain scenarios—need to be increased significantly to achieve full cost recovery.<sup>16</sup> These results were consistent with our 2013 audit findings that cost recovery was only about 15 percent. Even though the fee study cost approximately \$150,000, it was never finalized. Current PUD management speculates this was because the consultants' fee structure was too complicated, but this cannot be verified due to the significant change in PUD management staff since 2016. The results of this fee study were never presented to the City Council and were not provided to OCA during our biannual recommendation follow-up process.

Around the time PUD decided not to move forward with the results of that fee study, PUD provided the same consultant (B&V) with IWCP cost and revenue data and asked if the amount of costs being passed on to other customers was material. Based on the data PUD provided, B&V concluded that IWCP costs were being fully recovered and that raising permit fees would not have a material effect on wastewater revenues or wastewater rates for non-IWCP permittees. PUD provided a letter from B&V to OCA to this effect and asked that we close the remaining IWCP recommendations because the costs were not material. However, upon a closer review, OCA identified that the data PUD provided to B&V significantly overestimated revenues. Specifically, it included revenues for items such as “trucked waste,” which is revenue for treatment of waste trucked into PUD dumping locations (such as waste

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<sup>16</sup> Not all fees in this fee study were directly comparable with current fees because the study recommended creating many different classes of permittees with different rates. However, some of the proposed fees in the study were directly comparable to current fees and showed a significant increase in certain scenarios.

from portable toilets), and unrelated to IWCP inspections and monitoring.

In July 2018, PUD retained another consultant (Raftelis) to study IWCP fees again—this time at a cost of \$30,000.<sup>17</sup> Again, using data and assumptions from PUD, Raftelis concluded that only about \$500,000 of IWCP's costs were not being recovered from IWCP permittees. Further, Raftelis concluded these unrecovered costs were not significant in the sense that increasing fees to achieve cost recovery would not have a material effect on rates, and the reduction to wastewater charges (presumably for other, non-industrial customers) would be less than one cent.<sup>18</sup> Our office again questioned the assumptions used to reach this conclusion, and PUD subsequently acknowledged that unrecovered costs totaled approximately \$3.3 million per year while asserting that this amount was immaterial given the size of wastewater revenues.

PUD is awaiting the results of a new fee study, at a cost of \$21,090,<sup>19</sup> which is intended to determine what full cost recovery fees would be and how much of those costs can be justifiably passed along to non-IWCP ratepayers. As discussed in more detail below, PUD plans to recommend updated fees to the City Council by January 2021 to correct some of the remaining cost recovery issues with the program.

**Exhibit 6** summarizes key events related to our audit since 2013.

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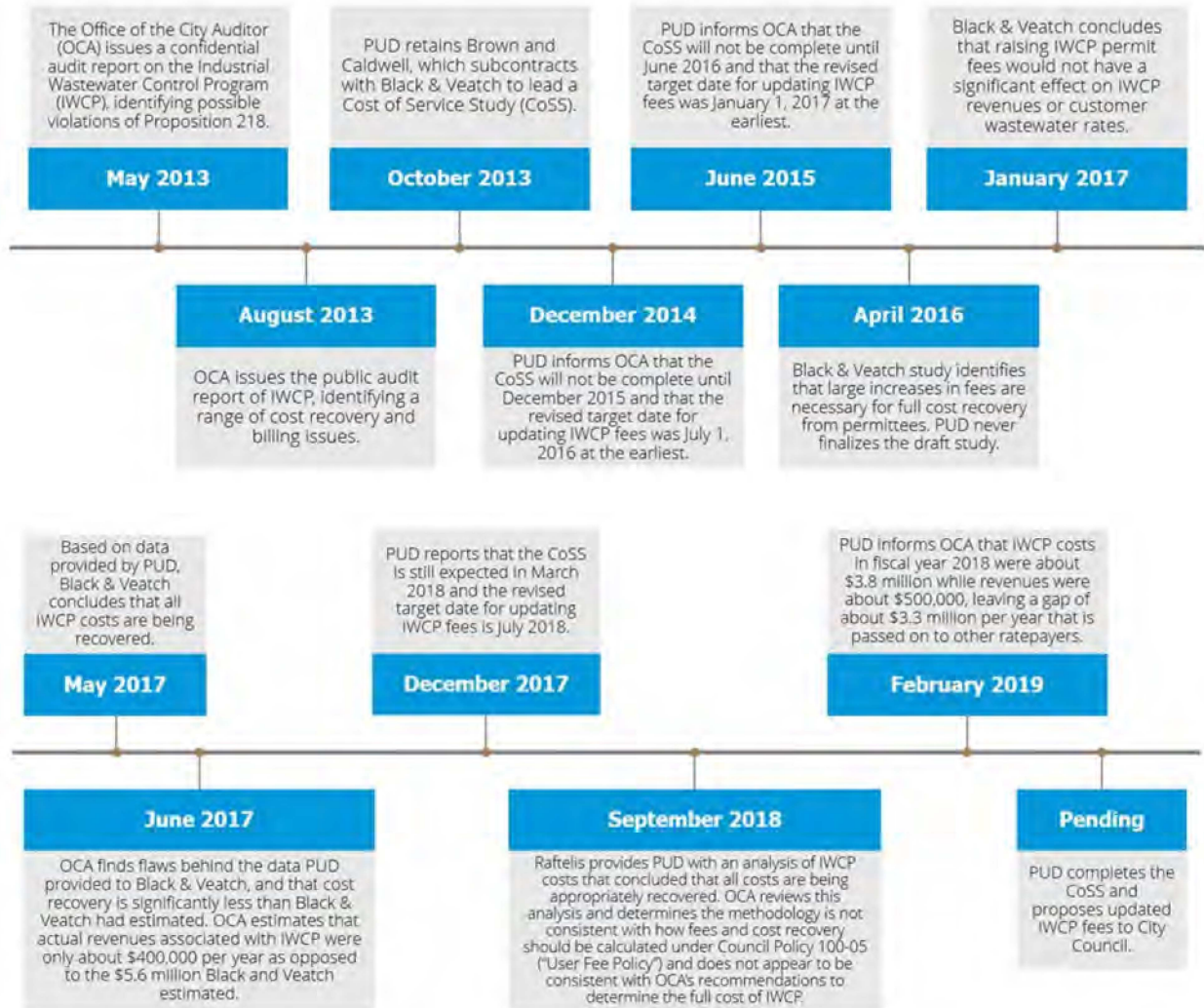
<sup>17</sup> This is a line item amount set aside for this work in a larger contract with the consultant. Actual invoice payments total \$18,910 as of July 8, 2020.

<sup>18</sup> The consultant did not specify a time or unit interval when making this estimation; therefore, it is unclear whether this one cent applies monthly, annually, per unit of water used, etc.

<sup>19</sup> The allocated amount for the current fee study is \$21,090; about \$18,400 of that has been invoiced as of July 8, 2020.

Exhibit 6

Timeline of IWCP Events Since 2013



Source: Auditor generated based on communications between OCA, PUD, and the City Attorney’s Office.

**New Audit Underway**

In addition to this follow-up report, our office plans to complete another audit of IWCP; the tentative objectives of that audit will focus on operational issues of the program, such as permitting, monitoring, and enforcement.

**IWCP Organizational Changes Since 2013 Audit**

In June 2018, IWCP engaged a consultant team to review and assess staffing levels, organization, and workflow. The resulting consultant report made a total of 22 recommendations across 6 program areas. According to the

schedule in the report, changes to the program would be implemented between May 2019 and October 2020.<sup>20</sup> Among these changes is an organizational restructuring to facilitate the Enhanced Source Control Program's (ESCP) workflow.<sup>21</sup> Previously, inspections for both SIUs and businesses that fell within ESCP were handled by the same work group, while enforcement activities, including the issuance of Notice of Violations (NOVs), were handled by a separate work group. As shown in **Exhibit 7**, SIU inspection activities have been assigned to one group of inspectors while non-SIU businesses have been assigned to two groups: Source Control-North and Source Control-South. Enforcement activities are being incorporated into the workload of inspectors in both the SIU and Source Control work groups.<sup>22</sup>

In addition, according to PUD, the Support Services group was set up to develop, update, and maintain Standard Operating Procedures (SOPs) for IWCP. Support Services is also tasked with assisting in groundwater permitting and supporting the clerical needs of the program. PUD management informed us that program staff has been working on developing SOPs during the COVID-19 pandemic while working remotely.

Moreover, five new full-time equivalent positions were created in the FY 2020 budget. One of these was an unclassified Program Manager position to oversee the program because, according to PUD management, the increased importance of IWCP as Pure Water is implemented warrants leadership at a higher level. The position was filled in October 2019. The addition of these positions further increases IWCP's program costs.

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<sup>20</sup> It is unknown whether this timeline will change based on operational impacts from the COVID-19 pandemic.

<sup>21</sup> ESCP was created in 1998 in response to regulatory requirements associated with the waiver from secondary treatment granted to the City's Point Loma Wastewater Treatment Plant. As the City begins implementing the first phase of the Pure Water Program, ESCP will be important to regulate the discharge of toxic pollutants and pesticides into the system from non-industrial sources.

<sup>22</sup> We observed inspectors in both work groups in March 2020. Based on our observations, it appears IWCP has a large backlog of inspections for both SIU and ESCP permittees. We may explore this issue further in our forthcoming audit of IWCP's permitting and enforcement processes.

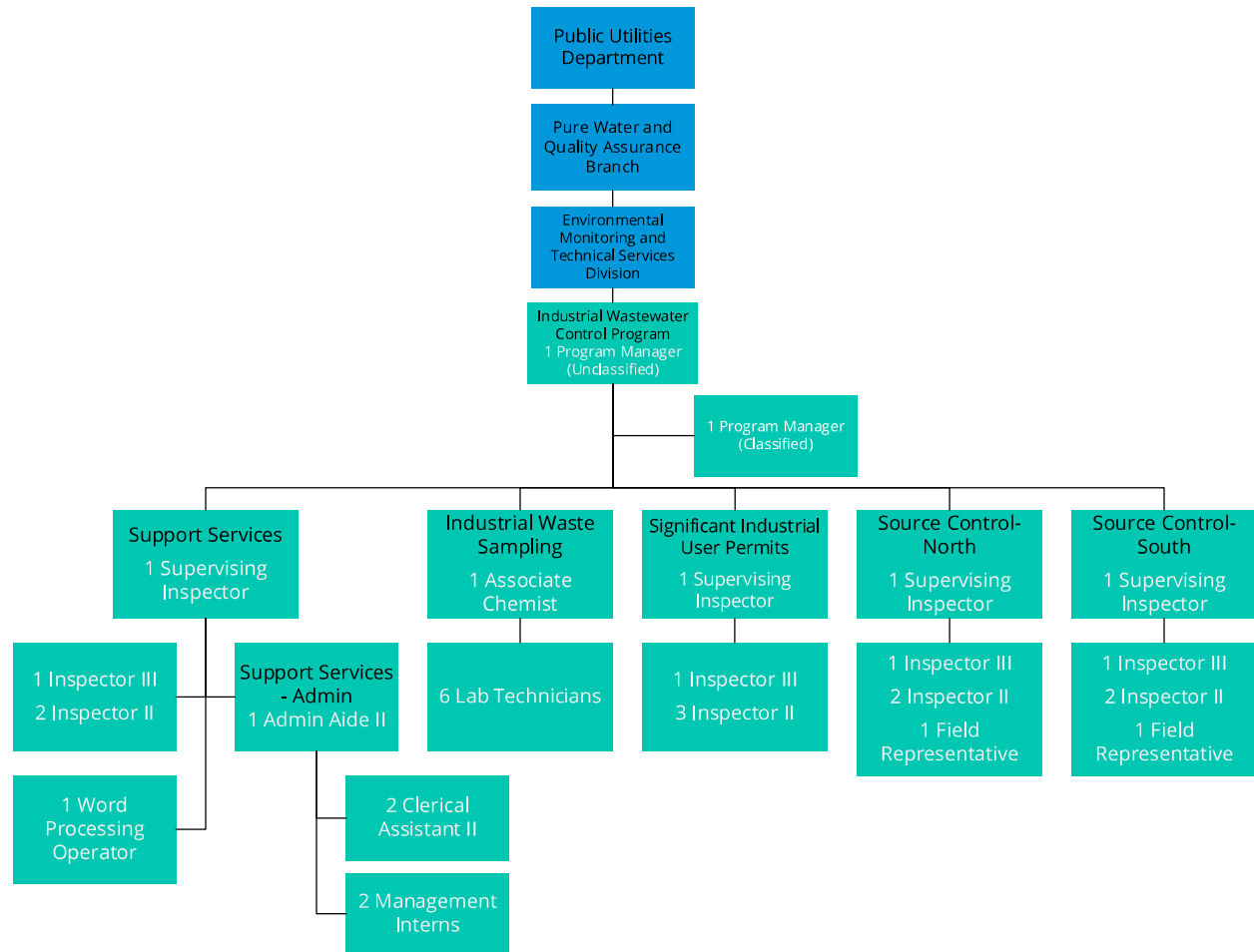
In February 2019, PUD requested a Special Salary Adjustment (SSA) of 20 percent for the Industrial Wastewater Pretreatment Inspector series (Inspector I, II, and III) to address retention issues in the Program, the differential in salary created by prior SSAs for Chemists and Lab Techs, and to increase the incentive for staff to remain with the City and IWCP. According to PUD, the SSA was approved, and new salaries were effective July 2019.

These changes are significant to the program's restructuring, but it is important to note that additional staffing will also increase the program's costs. Therefore, if program fees remain the same, there is a risk that cost recovery could become even lower.

IWCP implemented its new organizational structure in April 2020; the most current version is shown in **Exhibit 7**.

Exhibit 7

Industrial Wastewater Control Program Organizational Structure as of June 2020



Source: Auditor generated based on information provided by PUD.



# Audit Results

## **Finding 1: The Public Utilities Department Has Not Adjusted Many IWCP Permit Fees Since 1984, and its Cost Recovery Practices Remain Out of Compliance with City Policies and Possibly State Law**

### **Finding Summary**

While the Public Utilities Department (PUD) has made some progress, the issues we identified in our 2013 audit of the Industrial Wastewater Control Program (IWCP) remain largely unaddressed. Many fees have still not been adjusted since 1984, and program cost recovery remains very low. For example, while program costs totaled approximately \$38.8 million between FY 2010 and FY 2019, only about \$5.5 million (14 percent) was recovered through program fees charged to regulated businesses. The remaining \$33.3 million (86 percent) of program costs were passed on to other wastewater customers, including residential and commercial customers, via wastewater rates.

These cost recovery practices remain out of compliance with City regulations and policies. More seriously, the possibility remains that, by passing most program costs on to other wastewater customers, the City may not be complying with Proposition 218 (Prop 218).<sup>23</sup> We also identified an additional concern with Prop 218 compliance that is created by complexities in PUD's wastewater accounting and its agreement with Participating Agencies (PAs). Specifically, due to these complexities, the \$33.3 million needed to subsidize IWCP between FY 2010 and FY 2019 came exclusively from City of San Diego wastewater customers, even though IWCP serves the larger metro area, including 12 PAs.

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<sup>23</sup> As previously noted, we do not reach any legal conclusions in this report regarding Proposition 218, and nothing in this report should be interpreted as any type of legal conclusion.

## Follow-up Performance Audit of the Industrial Wastewater Control Program

PUD has options to ensure IWCP’s cost recovery practices comply with City policies and state law and has recently made progress to this end. However, several of these efforts are still underway; therefore, our office will continue to monitor these developments as they apply to the recommendations we make in this report.

**From FY 2010 to FY 2019,  
86 Percent of IWCP  
Costs—Totaling More  
Than \$30 Million—Were  
Passed on to Other  
Wastewater Customers**

Our 2013 audit identified that many IWCP fees had not been updated since 1984 and others since 1999. That issue remains unaddressed since our 2013 audit, which now means that many program fees have not been adjusted for 36 years.

As a result, the vast majority of IWCP costs continue to be passed on to other wastewater customers. As **Exhibit 8** and **Exhibit 9** show, unrecovered IWCP costs averaged about \$3.3 million—or 86 percent—per year, totaling \$33.3 million in the ten-year period between FY 2010 and FY 2019. Those costs were offset by revenues from non-IWCP sources, including wastewater rates charged to residential and commercial customers.

### Exhibit 8

#### IWCP Revenues, Expenses, and Cost Recovery, Fiscal Years 2010-2019

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Violation Fees	\$21,250	\$23,483	\$20,153	\$16,877	\$14,824	\$16,306
Discharge Fees*	\$89,216	\$101,411	\$95,136	\$293,578	\$536,840	\$168,797
Lab Monitoring Fees	\$14,587	\$12,685	\$15,326	\$149,097	\$471,710	\$86,454
Trucked Waste Fees^	\$177,957	\$192,466	\$170,336	\$171,231	\$169,906	\$230,036
Misc. Revenues			\$3,003			
<b>Total Revenues†</b>	<b>\$303,010</b>	<b>\$330,045</b>	<b>\$303,954</b>	<b>\$630,783</b>	<b>\$1,193,280</b>	<b>\$501,593</b>
<b>Total Billable Expenses</b>	<b>\$3,137,974</b>	<b>\$3,190,876</b>	<b>\$3,465,149</b>	<b>\$4,250,040</b>	<b>\$5,153,584</b>	<b>\$4,946,787</b>
<b>Unrecovered Costs</b>	<b>(\$2,834,964)</b>	<b>(\$2,860,831)</b>	<b>(\$3,161,195)</b>	<b>(\$3,619,257)</b>	<b>(\$3,960,304)</b>	<b>(\$4,445,194)</b>
<b>Percent Cost Recovery</b>	<b>10%</b>	<b>10%</b>	<b>9%</b>	<b>15%</b>	<b>23%</b>	<b>10%</b>

## Follow-up Performance Audit of the Industrial Wastewater Control Program

	FY 2016	FY 2017	FY 2018	FY 2019	Total
Violation Fees	\$14,925	\$12,820	\$31,340	\$27,975	\$199,953
Discharge Fees	\$95,005	\$323,133	\$108,550	\$108,730	\$1,920,396
Lab Monitoring Fees	\$8,564	\$169,256	\$82,155	\$3,618	\$1,013,452
Trucked Waste Fees	\$281,422	\$312,813	\$295,559	\$327,630	\$2,329,356
Misc. Revenues					\$3,003
<b>Total Revenues</b>	<b>\$399,916</b>	<b>\$818,022</b>	<b>\$517,604</b>	<b>\$467,953</b>	<b>\$5,466,160</b>
<b>Total Billable Expenses</b>	<b>\$4,187,460</b>	<b>\$3,590,548</b>	<b>\$3,601,533</b>	<b>\$3,253,635</b>	<b>\$38,777,587</b>
<b>Unrecovered Costs</b>	<b>(\$3,787,544)</b>	<b>(\$2,772,525)</b>	<b>(\$3,083,928)</b>	<b>(\$2,785,683)</b>	<b>(\$33,311,426)</b>
<b>Percent Cost Recovery</b>	<b>10%</b>	<b>23%</b>	<b>14%</b>	<b>14%</b>	<b>14%</b>

Notes: **Exhibit 5** in our 2013 audit report includes a similar table for FY 2010 through FY 2012. The corresponding figures in this table originate from that exhibit, but we have adjusted them as follows:

\* In the 2013 table, "Discharge Fees" were classified as "Permitting Fees."

^ In the 2013 table, "Trucked Waste Fee" amounts were included as part of the "Permitting Fees" and "Monitoring Fees" categories. We adjusted the figures and separated out Trucked Waste revenues here for FY 2010 through FY 2012 to be consistent with other years in the table.

† In the 2013 table, "Total Revenues" included an estimated amount in each of the years (FY 2010 through FY2012) for certain permitting and monitoring revenues that had not actually been recovered at the time. After our 2013 audit, and in our office's Audit Recommendation Follow-up Report for the period ending June 30, 2014, we reported that PUD invoiced for previously unbilled permits and monitoring services for FY 2010 through FY 2012. The invoices totaled about \$628,000. Therefore, we removed the estimated revenue amounts for FY 2010 through FY 2012 from this table so as to not double count the actual revenues PUD recovered subsequent to our 2013 audit.

Source: Auditor generated based on information from PUD (FY 2010 through FY 2012) and PUD (FY 2013 through FY 2019).

**IWCP's Cost Recovery Practices Remain Out of Compliance with City Policies and Possibly State Law**

By not studying fees and presenting them to the City Council on a regular basis, PUD is not complying with multiple City regulations and policies. Specifically, San Diego Municipal Code Section 64.0508 states that Industrial Wastewater Discharge Permit Fees should be established periodically by a resolution of the City Council. In addition, the City has several policies and procedures in place requiring periodic review and updating of fees to ensure adequate cost recovery. For example, according to Administrative Regulation 95.25, the City's policy is to annually review fees to ensure that all reasonable costs incurred in providing these services are being recovered. In addition, Council Policy 100-05 also states that fees should achieve full cost recovery, except in certain cases where the intent is to provide a specific benefit to recipients (such as recreation center or library fees). The policy also requires in-depth fee studies every three years, with interim adjustments to fees taking place on an annual basis. Finally, the policy requires City Council approval for changes to fees in Enterprise Fund departments (including PUD). Because updated IWCP fees still have not been proposed to the City Council for approval, PUD is still out of compliance with these policies.

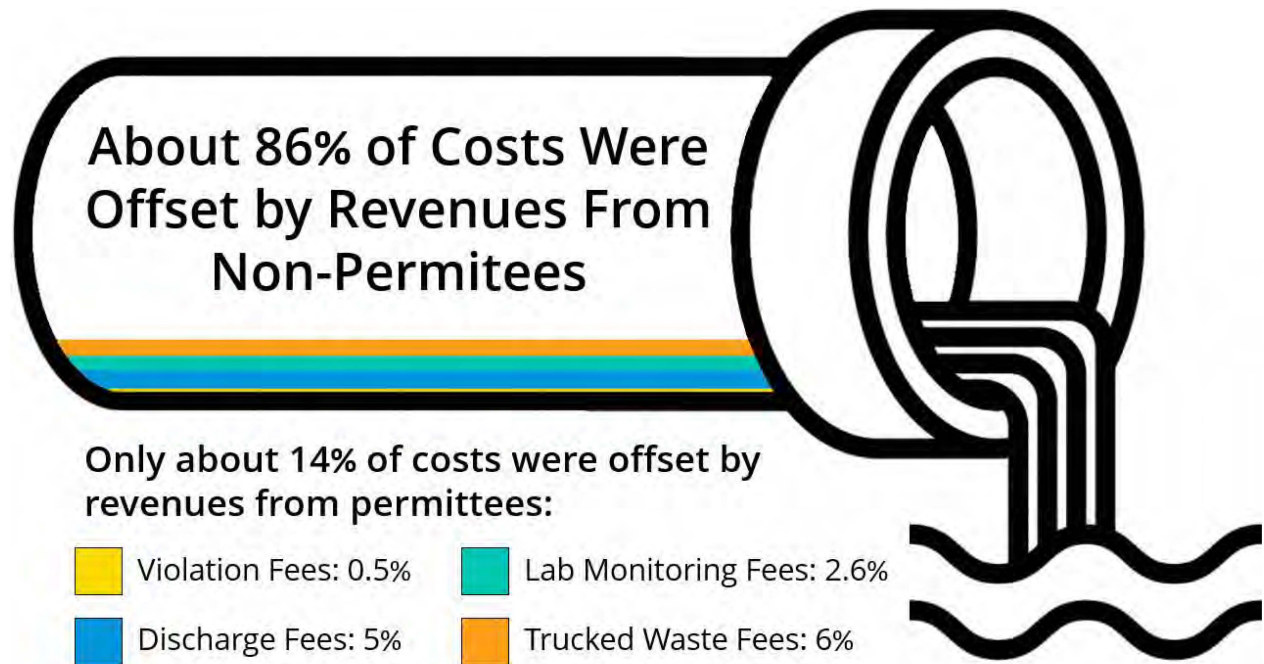
More importantly, evidence gathered since 2013 indicates an increased likelihood that the City's cost recovery practices for IWCP remain potentially out of compliance with the requirements of Prop 218, which essentially states that utility ratepayers can only be charged in accordance with the benefit they receive.<sup>24</sup> Since FY 2010, IWCP has cost over \$38 million. IWCP permittees benefit from the program by being allowed to operate businesses that may potentially discharge harmful substances into the metropolitan wastewater system. However, they have only paid about \$5.5 million via IWCP fees (about 14 percent of IWCP costs) during this time. The other 86 percent of IWCP costs, or about \$33.3 million, has been passed along to other City wastewater customers that are not IWCP permittees, such as residential customers, via higher wastewater rates.

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<sup>24</sup> As previously noted, we do not reach any legal conclusions in this report regarding Proposition 218, and nothing in this report should be interpreted as any type of legal conclusion.

Exhibit 9

Between Fiscal Years 2010 and 2019, Only About 14 Percent of IWCP’s Costs Were Offset by Revenues from IWCP Permittees



Source: Auditor generated based on information from PUD.

While Prop 218 does not necessarily require full cost recovery, PUD does need to thoroughly analyze the benefits of IWCP and allocate costs equitably between IWCP permittees and other wastewater customers. There are clearly benefits to the average customer—such as avoiding secondary treatment at the Point Loma wastewater treatment facility, which PUD estimates would cost ratepayers almost \$2 billion.<sup>25</sup> However, PUD needs to analyze and quantify these benefits and then seek City Council approval for updated fees, which PUD has not historically done. According to PUD, this analysis is currently in process. Thus, the longer PUD takes to perform

<sup>25</sup> Secondary treatment is the second stage in most wastewater treatment systems in which bacteria consume the organic matter in wastewater. The Clean Water Act requires that municipal wastewater treatment plants meet a minimum of secondary treatment. However, the City has for decades operated under a waiver from secondary treatment under Sections 301(h) and 301(j)(5) of the Clean Water Act, and PUD has noted that IWCP helps ensure the City’s ongoing eligibility to receive this waiver. Absent this waiver, which must be renewed every five years, the City would need to upgrade the Point Loma wastewater treatment facility to provide secondary treatment. According to PUD, the estimated cost to ratepayers for upgrading the plant to secondary treatment is almost \$2 billion.

this analysis, the longer the City is potentially out of compliance with Prop 218 and potentially subject to legal liability.

While PUD has recently acknowledged that cost recovery issues are substantial—averaging \$3.3 million per year passed on to other customers between FY 2010 and FY 2019—PUD has still maintained that this is not a material amount given total wastewater revenues. For example, revenue from sewer service charges—which is used to offset IWCP’s unrecovered costs—was approximately \$267.1 million in FY 2018.

Therefore, unrecovered costs of \$3.3 million would represent just over 1 percent of that revenue. PUD also estimated that recovering an additional \$3.3 million in IWCP fees in FY 2018 would have lowered the typical single-family residential customer’s total sewer bill by just 1.3 percent. Using this information, we estimate that recovering an additional \$3.3 million in IWCP fees would roughly translate to approximately \$5 per year in savings for the average single-family residential customer.

While the amount of unrecovered costs may be very small compared to overall wastewater revenues, the City is not meeting certain obligations by allowing revenues from other customers to offset unrecovered IWCP costs. For example, the City has an obligation under Prop. 218 to ensure its ratepayers are not paying more than their fair share of wastewater expenses and to accurately allocate expenses within the appropriate funds. In addition, legal compliance with Prop 218 is the minimum requirement the City must meet when setting fees appropriately. Prop 218 issues aside, not adjusting fees for up to 36 years and applying revenues from residential customers to offset costs created by certain industrial users may create inequity, represents poor stewardship of customer revenues, and can damage public perception of the organization. While there are many aspects and potential effects to consider, a decision on an appropriate cost recovery level—including how much should be passed on to other customers—should ultimately be made by the Mayor and the City Council.

**Even Though the City Provides Wastewater Services—including IWCP—in the Metro Area, City Ratepayers Alone Are Subsidizing IWCP**

We uncovered an additional cost recovery issue since our 2013 audit that is caused by complexities in PUD's wastewater accounting structure and the City's agreement with the Participating Agencies (PAs). PUD uses two funds to account for wastewater activities: the Municipal Wastewater Fund (Muni Fund) and the Metropolitan Wastewater Fund (Metro Fund).<sup>26</sup> Only City customers contribute to the Muni Fund, while the Metro Fund includes revenues from both City customers and customers in the PAs. In addition, the current Regional Wastewater Disposal Agreement between the City and the PAs prohibits any IWCP costs from being passed on to PAs.<sup>27</sup> Accordingly, IWCP's revenues and expenses are budgeted exclusively within the Muni Fund, even though IWCP regulates businesses throughout the metro wastewater area—both within and outside of the City.<sup>28</sup> This means costs incurred by the program that are not recovered through fees charged to regulated businesses—which average to about 86 percent of program costs since FY 2010—are offset by revenues generated *only* from City customers. Thus, because IWCP does not recover all of its costs, and because IWCP is budgeted in the Muni Fund, the average single-family residential customer in the City pays about \$5 per year to subsidize IWCP while similar residential customers in the PAs pay nothing to subsidize IWCP—even though approximately

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<sup>26</sup> The Muni and Metro Funds have different revenue and expense sources and support different capital improvement projects. The Muni Fund receives revenues from sewer service charges; wastewater fees; and grants to cover expenses for maintaining, collecting, and transporting wastewater. The Metro Fund receives revenues from sewer service charges; wastewater fees; grants; and the sale of electricity generation. Importantly, revenue from Participating Agencies is used exclusively in the Metro Fund.

<sup>27</sup> In December 2018, the City Council and the Mayor approved an Amended and Restated Regional Wastewater Disposal Agreement; this agreement states that the City and the Participating Agencies intend to negotiate within a year of the effective date to address, among other things, the issue of IWCP costs and whether and to what extent those will be shared among the parties. We learned from the City Attorney's Office that the Amended and Restated Disposal Agreement is not in effect because two Participating Agencies have not signed it. Nevertheless, according to the City Attorney's Office, the parties are moving closer to getting the Amended and Restated Agreement fully authorized. In the meantime, the previous Disposal Agreement—which became effective in 1998—is still in effect.

<sup>28</sup> The metro wastewater area includes the City of San Diego plus 12 Participating Agencies. Refer to **Exhibit 3** for a map of IWCP's service area.

one-third of businesses regulated by IWCP are located outside the City. Exhibit 10 illustrates that only revenue from City customers is used to offset unrecovered costs, even though IWCP serves the larger metro area.

Exhibit 10

City Customers Alone Subsidize IWCP's Costs, Even Though IWCP Serves the Larger Metro Area



\*Not all Participating Agencies appear in this graphic. Refer to Exhibit 3 for a complete representation of Participating Agencies.

Source: Auditor generated based on information provided by PUD.



**PUD Has Options to  
Ensure Compliance with  
City Cost Recovery  
Policies and Proposition  
218**

The simplest way to ensure compliance with the City's cost recovery policies and the requirements of Proposition 218 is to thoroughly study IWCP costs, develop fees that achieve full cost recovery, and present them to the City Council for approval and implementation. Assuming PUD were to achieve full cost recovery, this approach would also eliminate the need to move IWCP's budget from the Muni Fund to the Metro Fund, since IWCP permittees would be directly offsetting all program costs.

However, a different and more comprehensive approach—one that allows for less than full cost recovery—would be for PUD to thoroughly study the costs *as well as the benefits* of the program. PUD could then develop fees that achieve a desired level of cost recovery from IWCP permittees while being able to justify passing on the unrecovered costs to other wastewater customers (based on the quantifiable benefits those other customers receive from the program). In this scenario, the costs passed on to other customers must not be more than the benefits they receive from the program; therefore, the quantifiable benefits of the program would dictate the program's minimum cost recovery level.

However, this second option is more complicated because it requires PUD to complete additional analysis before setting program fees. For example, in addition to studying costs, PUD would need to thoroughly analyze and quantify the benefits that IWCP provides to non-IWCP customers—which may be difficult to accomplish, especially if those benefits are not easily quantifiable. Moreover, this option may potentially increase the risk of non-compliance if a court were to find the City's analysis overestimated the relative benefit of the program to non-IWCP customers. Finally, the second option is more complicated because PUD would also need to move IWCP's budget from the Muni Fund to the Metro Fund to ensure that any unrecovered costs are shared between the City and the Participating Agencies.

For comparative purposes, we reviewed the cost structures of other agencies' IWCP-like programs to compare cost recovery rates and other elements relating to IWCP improvements. We compared IWCP to the Orange County (CA) Sanitation District,

the City of Portland's Industrial Pretreatment Program, the City of San Jose's Industrial Discharge Program, and King County's (WA) Industrial Waste Program.<sup>29</sup> We found that cost recovery varies for the other agencies—from 10 percent to 100 percent. In San Diego, cost recovery averaged 14 percent between FY 2010 and FY 2019. In addition, other agencies update their permit fees regularly and have methods to track billable costs clearly, accurately, and explicitly related to industrial wastewater.

**PUD Has Recently Made Progress in Implementing Some of the Recommendations from Our 2013 Audit and to Ensure Compliance with City Cost Recovery Policies and Proposition 218**

In response to Recommendation 1 from our 2013 audit report, PUD recently drafted a process narrative for calculating all billable IWCP costs and program revenues so that PUD staff can determine IWCP fee levels and appropriate cost recovery rates. The draft process narrative is supplemented by screenshots and a spreadsheet to assist staff in calculating IWCP costs and revenues. While the process narrative and supplemental materials are still in draft form as of June 2020, they appear to substantively address Recommendation 1 from our 2013 audit report. Our office will make a final determination on the status of this recommendation after PUD finalizes the process narrative and approves it for use.<sup>30</sup>

In addition, and according to PUD, the department is pursuing the second approach described above to ensure compliance with the City's cost recovery policies and the requirements of Prop 218. PUD has engaged a consultant to complete a cost of service study and assist the department in developing updated IWCP fees for approval by the City Council. According to PUD, their consultant is also working to quantify the benefits of IWCP so that PUD may better understand whether a portion of the program's costs can be justifiably passed on to other customers. In addition, the department intends to move IWCP's budget from the Muni Fund to the Metro Fund at some point in the future. Finally, PUD has developed a draft fee

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<sup>29</sup> All comparable programs were chosen based on similarities to the City of San Diego's IWCP. However, the City of San Diego is the only program that participates in the 301(h) waiver program. In addition, Portland and King County are not located in California, and thus are not subject to the provisions of Prop 218.

<sup>30</sup> After we reviewed the draft process narrative, PUD management informed us that the final version will likely be in the form of a department instruction.

model; this draft model allows staff to determine fee levels that would be necessary to fully recover IWCP's program costs. The draft fee model; the analysis by PUD's consultant; the determination on a proposed cost recovery level; and the proposal of updated program fees to the City Council for approval are all pending as of June 2020. We note that these items and actions collectively touch on several of the recommendations we made in our 2013 audit report—specifically Recommendations 2, 3, 4, and 5. Therefore, our office's final determination on the status of these recommendations is pending completion of these items.

**Recommendations**

Given that the same issues we identified in 2013 are largely still taking place and that PUD has not implemented the recommendations we made at that time, we make the same recommendations in this follow-up report. The following recommendations were made in our 2013 public audit and have been modified to include the potential Prop. 218 issues we raised in our 2013 confidential memo. We note that Recommendations 4 and 6 depend on negotiating with the Participating Agencies; we encourage the City to negotiate terms that allow these recommendations to be implemented as stated.

Specifically, in order to ensure that cost recovery practices for IWCP are brought into compliance with City policies and state law as quickly as possible, we recommend:

**Recommendation 1**

The Public Utilities Department should establish policies and procedures to track all billable IWCP related costs so that fee levels and appropriate cost recovery rates can be determined effectively. (Priority 1)

**Recommendation 2**

The Public Utilities Department should establish policies and procedures to periodically review fee levels and present fee proposals to the City Council. These reviews and fee studies should include calculation of the rate of cost recovery achieved by current fees. Reviews should be conducted on an annual basis, and detailed fee studies should be conducted not less than every three years, in accordance with Council Policy 100-05 and Administrative Regulation 95.25, and

proposed fees and cost recovery levels should comply with Proposition 218. (Priority 1)

**Recommendation 3** The Public Utilities Department should perform a fee study to determine fee levels that achieve full cost recovery for all IWCP activities, including all labor and materials required for application review and permitting, inspections, monitoring, and sample analysis, as well as overhead and non-personnel expenses. The Public Utilities Department should ensure that methodologies used to calculate fees are adequately documented and consult with the Office of the City Attorney to meet all applicable legal requirements, including those established by Proposition 218. (Priority 1)

**Recommendation 4** Upon completion of the fee study, the Public Utilities Department should work with the Office of the City Attorney and the Participating Agencies to review and revise, as appropriate, Interjurisdictional Agreements to include fees for service that achieve appropriate cost recovery under the guidelines of Council Policy 100-05 and Administrative Regulation 95.25, as well as Proposition 218. The revised agreements should include mechanisms to adjust fees in response to changes in the cost of service. (Priority 1)

**Recommendation 5** Upon completion of the fee study, the Public Utilities Department, in consultation with the City Attorney's Office, should develop a proposal for consideration by the City Council to update fees for Industrial Users within the City of San Diego. This proposal should include fees that achieve appropriate cost recovery under the guidelines of Council Policy 100-05 and Administrative Regulation 95.25, as well as Proposition 218. The revised fee schedules should include mechanisms to adjust fees in response to changes in the cost of service. (Priority 1)

In addition to the recommendations we made in 2013, we make the following new recommendation to ensure that any IWCP programs costs that are not recovered through program fees from regulated businesses are divided equitably between City customers and customers within the Participating Agencies. As previously noted, and per the Amended and Restated Disposal Agreement, this requires the City to negotiate with the Participating Agencies.

**Recommendation 6** The Public Utilities Department should move the Industrial Wastewater Control Program's budget from the Municipal Wastewater Fund to the Metropolitan Wastewater Fund.  
(Priority 1

## Finding 2: Billing Lapses Have Reoccurred Due to Overly Complex and Inefficient Processes and a Breakdown in Oversight

### Finding Summary

Even though the Public Utilities Department (PUD) implemented our 2013 recommendation to recover costs that went unbilled between FY 2008 and FY 2012,<sup>31</sup> we found that, since FY 2017, PUD again failed to bill many IWCP permittees outside the City. As in 2013, we found this was largely due to overly-complex and labor-intensive billing processes and a breakdown in billing oversight.

PUD management stated that adopting a standardized billing process for all program fees, regardless of jurisdiction, is ultimately their goal. However, according to PUD management, this is something that would need to be negotiated as part of updated agreements with Participating Agencies (PAs). In addition, PUD must still propose updated program fees to the City Council for approval. Therefore, implementing a single billing procedure will likely take place further in the future.

### **IWCP Still Uses Multiple Billing Processes, which is Inefficient and Increases the Risk of Billing Errors**

As show in **Exhibit 11** below, our 2013 audit found that PUD used three different billing processes for different industrial businesses, depending on the jurisdiction in which they were located.

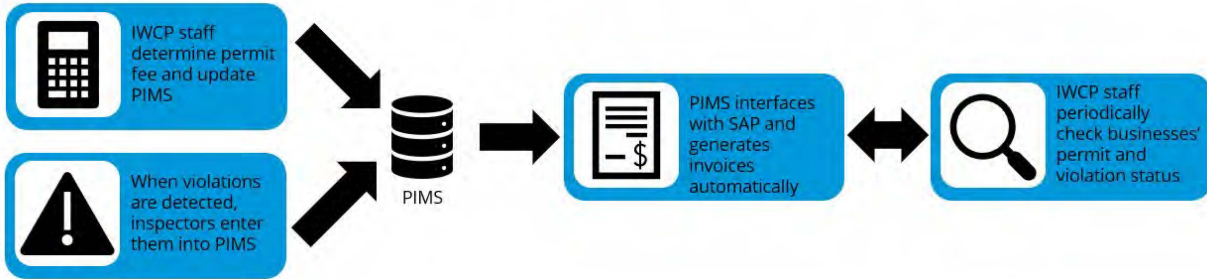
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<sup>31</sup> Prior to the completion of our 2013 audit, PUD sent invoices for unbilled charges accrued during FY 2008 and FY 2009. We later verified that PUD invoiced for previously unbilled permits and monitoring services for FY 2010 through FY 2012.

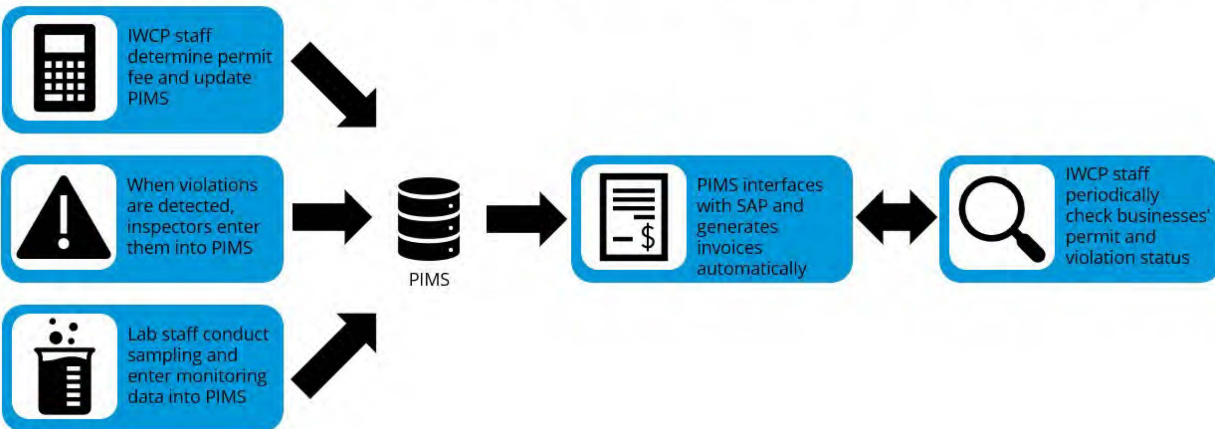
Exhibit 11

Summary of IWCP's Multiple Billing Processes

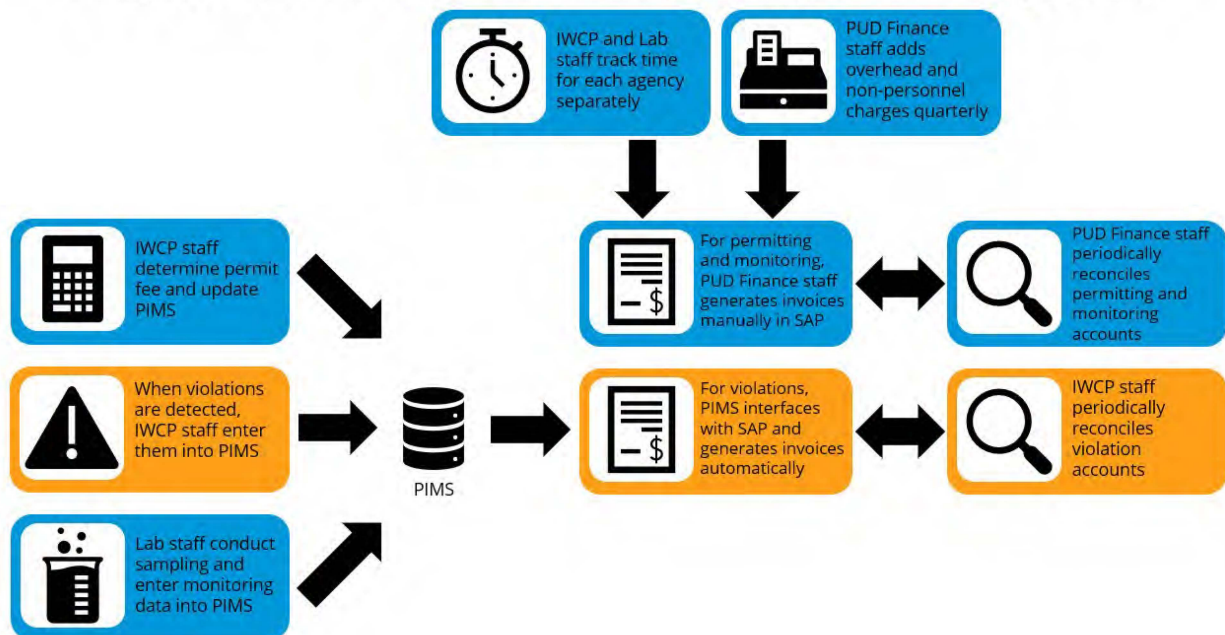
Billing Process for Industrial Users Within the City



Billing Process for Industrial Users Within the County Participating Agencies



Billing Process for Industrial Users Within the Municipal Participating Agencies



Source: Auditor generated summary of PUD information.

This approach created unnecessary complexity, making it difficult for IWCP staff to ensure the timely and accurate billing and reconciliation of accounts. In fact, we found that IWCP failed to bill approximately \$850,000 to some regulated entities located outside the City during the five-year period between FY 2008 and FY 2012. This indicated both a lack of understanding of billing practices on the part of staff as well as a significant breakdown in billing oversight. We recommended that PUD develop a single, standardized billing process for all IWCP fees. That recommendation, however, has not been implemented since the 2013 audit.

Instead, we learned that IWCP still follows multiple billing processes depending on the jurisdiction in which an industrial business is located. We also learned that billing lapses have reoccurred, and IWCP has not billed all industrial businesses outside of the City since FY 2017.<sup>32</sup> According to PUD, this is a result of not having enough staff to accomplish the billing for all municipal PAs. In addition, as in 2013, we conclude that the use of multiple billing processes is a major contributing factor to these lapses, as the current billing processes are overly complex, confusing, and inefficient. When asked whether IWCP would adopt a standardized billing process for all fees regardless of jurisdiction, PUD management stated that this is ultimately the goal and is something that would need to be negotiated as part of updated agreements with PAs. However, according to PUD management, billing procedures are only one aspect of those agreements—updated fees, for example, would also need to be addressed—so implementing a single billing procedure will likely take place further in the future.

For comparison, in the City of Los Angeles, the Bureau of Sanitation's Industrial Waste Division administers the Pretreatment Program, which regulates the discharge of industrial wastewater into the city's publicly-owned treatment works system. The Pretreatment Program's service area includes 19 contributing jurisdictions and 8 contract cities. According to Financial Management staff from the City of Los Angeles's Industrial Waste Division, the largest participating

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<sup>32</sup> The total amount that has gone unbilled is yet to be determined.



agencies have signed onto a Universal Terms Agreement (UTA). Under the UTA, the city treats the wastewater and the participating agencies must follow certain procedures relating to enforcement and regulation. The UTA also provides that the City of Los Angeles will charge participating agencies the same rates it charges users in the City of Los Angeles. Thus, the City of Los Angeles uses a singular billing process for all participating jurisdictions and may avoid the billing inefficiencies created by using multiple and complex billing processes.

Because the billing process issues identified in our 2013 audit have not been corrected, and because billing lapses have reoccurred, we again make the following recommendations to standardize IWCP's billing process, ensure accurate and timely billing, and improve efficiency:

**Recommendation 7** The Public Utilities Department should work with the Office of the City Attorney to seek recovery, to the greatest extent possible allowed by law, of all unbilled costs related to Industrial Wastewater Control Program application review, permitting, inspection, and monitoring. (Priority 1)

**Recommendation 8** The Public Utilities Department should establish a centralized billing process and standardized billing policies and procedures for all IWCP fees and charges. These policies and procedures should be documented in a process narrative and should:

- a. Establish responsibilities and timelines for generating and sending invoices for all IWCP fees and charges;
- b. Establish responsibilities and timelines for performing a periodic reconciliation of all IWCP revenue accounts;
- c. Establish guidelines and procedures for recording labor time, if necessary to determine invoice amounts;
- d. Establish guidelines and procedures for calculating invoice amounts; and
- e. Ensure that appropriate Separation of Duties controls are enforced. (Priority 1)

**Recommendation 9** The Public Utilities Department should perform a comprehensive review of all PIMS settings and invoice calculating features to ensure that invoices are automatically generated by PIMS and sent in a timely manner. (Priority 1)

# Conclusion

IWCP is an important City program. It is a key component of the City's environmental management efforts; plays a critical role in the City's compliance with wastewater regulations; helps to protect wastewater infrastructure and limit replacement costs; is important for protecting source water quality for the Pure Water Program; and is critical for the City's ongoing eligibility for the waiver from secondary wastewater treatment, which helps preclude the need to make about \$2 billion worth of upgrades to the Point Loma Wastewater Treatment Plant.

We believe that conducting this follow-up audit was in the public interest, given the importance of the program, the length of time that passed since our 2013 audit, and the numerous delays in implementing both the public and confidential audit recommendations. Even though the City has made some progress toward implementing these, we found that many of the same substantive issues remain largely unaddressed:

- Program fees have still not been updated for decades;
- Program cost recovery is still very low—only about 14 percent between FY 2010 and FY 2019;
- Unrecovered program costs are still offset by charges to other ratepayers, including residential and commercial customers, which creates the possibility that PUD's cost recovery practices do not comply with Proposition 218;<sup>33</sup> and
- Billing lapses reoccurred as a result of overly-complex and labor-intensive billing processes and a breakdown in billing oversight.

In addition to the issues we raised in 2013, this report identifies an additional concern with Proposition 218

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<sup>33</sup> As previously noted, we do not reach any legal conclusions in this report regarding Proposition 218, and nothing in this report should be interpreted as any type of legal conclusion.

compliance: City wastewater customers alone are subsidizing program costs, even though the program serves customers in the larger metro area, including customers in the Participating Agencies.<sup>34</sup>

Making changes to the program per our recommendations is important to ensure that program fees are regularly reviewed and updated; cost recovery is monitored; billing is timely; and cost recovery practices are equitable and comply with City policies and state law.

We will continue to monitor the City's progress in addressing the issues identified by our audits.

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<sup>34</sup> As previously noted, we do not reach any legal conclusions in this report regarding Proposition 218, and nothing in this report should be interpreted as any type of legal conclusion.

# Recommendations

- Recommendation 1** The Public Utilities Department should establish policies and procedures to track all billable IWCP related costs so that fee levels and appropriate cost recovery rates can be determined effectively. (Priority 1)
- Recommendation 2** The Public Utilities Department should establish policies and procedures to periodically review fee levels and present fee proposals to the City Council. These reviews and fee studies should include calculation of the rate of cost recovery achieved by current fees. Reviews should be conducted on an annual basis, and detailed fee studies should be conducted not less than every three years, in accordance with Council Policy 100-05 and Administrative Regulation 95.25, and proposed fees and cost recovery levels should comply with Proposition 218. (Priority 1)
- Recommendation 3** The Public Utilities Department should perform a fee study to determine fee levels that achieve full cost recovery for all IWCP activities, including all labor and materials required for application review and permitting, inspections, monitoring, and sample analysis, as well as overhead and non-personnel expenses. The Public Utilities Department should ensure that methodologies used to calculate fees are adequately documented and consult with the Office of the City Attorney to meet all applicable legal requirements, including those established by Proposition 218. (Priority 1)
- Recommendation 4** Upon completion of the fee study, the Public Utilities Department should work with the Office of the City Attorney and the Participating Agencies to review and revise, as appropriate, Interjurisdictional Agreements to include fees for service that achieve appropriate cost recovery under the guidelines of Council Policy 100-05 and Administrative Regulation 95.25, as well as Proposition 218. The revised agreements should include mechanisms to adjust fees in response to changes in the cost of service. (Priority 1)

- Recommendation 5** Upon completion of the fee study, the Public Utilities Department, in consultation with the City Attorney's Office, should develop a proposal for consideration by the City Council to update fees for Industrial Users within the City of San Diego. This proposal should include fees that achieve appropriate cost recovery under the guidelines of Council Policy 100-05 and Administrative Regulation 95.25, as well as Proposition 218. The revised fee schedules should include mechanisms to adjust fees in response to changes in the cost of service. (Priority 1)
- Recommendation 6** The Public Utilities Department should move the Industrial Wastewater Control Program's budget from the Municipal Wastewater Fund to the Metropolitan Wastewater Fund. (Priority 1)
- Recommendation 7** The Public Utilities Department should work with the Office of the City Attorney to seek recovery, to the greatest extent possible allowed by law, of all unbilled costs related to Industrial Wastewater Control Program application review, permitting, inspection, and monitoring. (Priority 1)
- Recommendation 8** The Public Utilities Department should establish a centralized billing process and standardized billing policies and procedures for all IWCP fees and charges. These policies and procedures should be documented in a process narrative and should:
- a. Establish responsibilities and timelines for generating and sending invoices for all IWCP fees and charges;
  - b. Establish responsibilities and timelines for performing a periodic reconciliation of all IWCP revenue accounts;
  - c. Establish guidelines and procedures for recording labor time, if necessary to determine invoice amounts;
  - d. Establish guidelines and procedures for calculating invoice amounts; and
  - e. Ensure that appropriate Separation of Duties controls are enforced. (Priority 1)

**Recommendation 9** The Public Utilities Department should perform a comprehensive review of all PIMS settings and invoice calculating features to ensure that invoices are automatically generated by PIMS and sent in a timely manner. (Priority 1)

# Appendix A: Definition of Audit Recommendation Priorities

The Office of the City Auditor maintains a priority classification scheme for audit recommendations based on the importance of each recommendation to the City, as described in the table below. While the City Auditor is responsible for providing a priority classification for recommendations, it is the City Administration’s responsibility to establish a target date to implement each recommendation, taking into consideration its priority. The City Auditor requests that target dates be included in the Administration’s official response to the audit findings and recommendations.

Priority Class <sup>35</sup>	Description
1	Fraud or serious violations are being committed. Significant fiscal and/or equivalent non-fiscal losses are occurring. Costly and/or detrimental operational inefficiencies are taking place. A significant internal control weakness has been identified.
2	The potential for incurring significant fiscal and/or equivalent non-fiscal losses exists. The potential for costly and/or detrimental operational inefficiencies exists. The potential for strengthening or improving internal controls exists.
3	Operation or administrative process will be improved.

<sup>35</sup> The City Auditor is responsible for assigning audit recommendation priority class numbers. A recommendation that clearly fits the description for more than one priority class shall be assigned the higher priority.



# Appendix B: Audit Objectives, Scope, and Methodology

In accordance with the City Auditor’s Fiscal 2020 Audit Work Plan, we conducted a follow-up audit of the Public Utilities Department’s (PUD’s) Industrial Wastewater Control Program (IWCP).

## Objectives and Scope

Given the serious issues identified in 2013 through both our public audit report and our confidential audit memorandum, and the apparent lack of progress in implementing our recommendations, we conducted this follow-up audit to evaluate the current state of PUD’s cost recovery efforts for IWCP. Specifically, our audit objectives were to review the implementation status of our 2013 recommendations and publicly report on the issues we had identified in 2013 through both our public audit and our confidential audit memorandum.

## Methodology

To do this, and in addition to the routine efforts we have made since 2013 as part of our office’s normal recommendation follow-up process, we requested and reviewed pertinent program documents from PUD. These included policies and procedures related to IWCP’s operations; recent permitting data; program expenses and revenues; service contract documents related to cost of service studies; current organizational charts; several annual wastewater pretreatment reports; and a program assessment report completed in 2019.

## *Data Reliability and Internal Controls*

We updated several key components from our 2013 audit report based on information provided by PUD, including the cost recovery table presented in **Exhibit 8**. For figures in the cost recovery table that PUD provided to us, we reviewed PUD’s methodology for calculating them, but we did not perform detailed data reliability testing. Our testing of internal controls was limited to reviewing PUD’s documentation for tracking costs and revenues.

We also reviewed correspondence between our office, PUD, and the City Attorney's Office to better articulate the sequence of notable events that took place since our 2013 public audit report and confidential audit memorandum.

In addition, we conducted several interviews with department management and program staff to discuss past developments and efforts to address our 2013 recommendations; the current state of the program, including field observations to better understand the permitting and inspection process; and management's recent progress in implementing our past recommendations, including the current cost of service study and other pending items that will impact the program and its cost recovery practices in the future.

**Compliance Statement**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: July 9, 2020

TO: Kyle Elser, Interim City Auditor, Office of the City Auditor

FROM: Shauna Lorance, Director, Public Utilities Department

SUBJECT: Management Response to Follow-Up Performance Audit of Public Utilities Department's Industrial Wastewater Control Program

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The purpose of this memorandum is to provide Management's response to the City Auditor's report entitled *Follow-Up Performance Audit of Public Utilities Department's Industrial Wastewater Control Program: PUD's Cost Recovery Practices Remain Out of Compliance with City Regulations, Policies, and Potentially State Law*.

Public Utilities Department (Department) management agrees with recommendations included in the audit and has made considerable progress toward completing several of this audit's recommendations over the past year. Under the leadership of Mayor Faulconer, a new management structure and team are now in place and we are committed to continuous improvement throughout our operations. Those improvements include the initial steps necessary to respond to this audit's recommendations, including a cost of service analysis for the Industrial Wastewater Control Program (IWCP) and development of a clear and documented process for tracking IWCP expenses and revenues to fully capture *all* of that program's financial impacts.

The Department has worked diligently with a rate consultant to prepare an IWCP cost recovery model that can be used to prepare updated fee proposals on both a near-term and long-term basis, and the model has sufficient usability and flexibility to adapt to future changes to the program's operations and budget. As noted in the audit and in our responses below, the Department's rate consultant is continuing to work to determine the appropriate portion of IWCP expenses that should be recovered directly through IWCP fees and those that should be recovered from system-wide users who indirectly benefit from the program. This work, along with the IWCP cost recovery model, will be used as the basis for a proposal the City Council can consider to adjust existing IWCP fees.

While over two decades have passed since IWCP fees were last updated, we have documented through our responses how we will periodically update fees to ensure that they remain appropriate and comply with all applicable regulations.

We appreciate the opportunity to provide comments on this audit and thank the City Auditor's team for their cooperation and professionalism throughout the audit process. Our responses to the audit recommendations are below.

**RECOMMENDATION #1:** The Public Utilities Department should establish policies and procedures to track all billable IWCP related costs so that fee levels and appropriate cost recovery rates can be determined effectively.

**Management's Response:** Agree. The IWCP is budgeted in multiple fund centers (an IWCP Fund Center and an Environmental Chemistry Services Fund Center) which requires the use of multiple data sources to accomplish this recommendation. The Department has prepared a draft Department Instruction that clearly documents processes and procedures for extracting IWCP expense and revenue data using SAP Business Objects and the Pretreatment Information Management System (PIMS). The draft Department Instruction clearly lays out the processes needed to extract budget information from SAP, and the steps needed to apply PIMS data, in order to capture specific IWCP expenses and revenues.

The information derived from this process provides total IWCP expenses and revenues that can be used in combination with the IWCP Cost Recovery Model (see Recommendations 2 and 3), to determine fee levels to achieve appropriate cost recovery.

**Target Implementation Date:** Tracking IWCP related costs, using SAP and PIMS, has been implemented. The Department Instruction will be finalized and put into effect by December 30, 2020, including training of all applicable team members. As new employees involved in this program are hired, additional training on the Department Instruction will be provided during the onboarding process.

**RECOMMENDATION #2:** The Public Utilities Department should establish policies and procedures to periodically review fee levels and present fee proposals to the City Council. These reviews and fee studies should include calculation of the rate of cost recovery achieved by current fees. Reviews should be conducted on an annual basis, and detailed fee studies should be conducted not less than every three years, in accordance with Council Policy 100-05 and Administrative Regulation 95.25, and proposed fees and cost recovery levels should comply with Proposition 218.

**Management's Response:** Agree. The response to Recommendation 1 provides the process necessary to identify total IWCP expenses and revenues that can be used in combination with the IWCP Cost Recovery Model (see Recommendation 3, to determine appropriate fee levels to achieve appropriate cost recovery, which will be executed annually). Additionally, the City contracted with Raftelis Financial Consultants, Inc. (Raftelis Consulting) to prepare a fee model that can allocate IWCP expenses to various IWCP functions and tasks, and that can be used to update IWCP permitting and violation fees. This model is substantially complete, and Raftelis Consulting is further preparing a user manual for the model that will allow the Department to update total expenses and the allocation of those expenses in order to propose updated fee levels on a periodic basis. The fee proposal consideration by the City Council is discussed in Recommendation 3.

As noted in the audit, the IWCP does provide benefits to non-industrial customers, and therefore it may be appropriate to not recover all IWCP costs from IWCP fees. Raftelis

Consulting is currently evaluating and quantifying these system-wide benefits to determine the appropriate level of direct cost-recovery through fees under Proposition 218.

**Target Implementation Date:** Most elements of this recommendation have been implemented. The Department Instruction will be finalized and operationalized by December 30, 2020, including training of all appropriate team members. An initial fee proposal will be developed in Fiscal Year 2021, and any implemented fee proposal will be reviewed to generate an updated fee proposal by Fiscal Year 2024.

**RECOMMENDATION #3:** The Public Utilities Department should perform a fee study to determine fee levels that achieve full cost recovery for all IWCP activities, including all labor and materials required for application review and permitting, inspections, monitoring, and sample analysis, as well as overhead and non-personnel expenses. The Public Utilities Department should ensure that methodologies used to calculate fees are adequately documented and consult with the Office of the City Attorney to meet all applicable legal requirements, including those established by Proposition 218.

**Management's Response:** Agree. As noted in the response to Recommendation 2, the Department has engaged Raftelis Consulting to create a fee model and user manual that will be used to develop fees for appropriate cost recovery of IWCP activities by allocating all expenses (including labor, materials, overhead, and non-personnel expenses) to specific IWCP functions and tasks. The model is substantially complete.

Raftelis Consulting is currently evaluating the appropriate level of direct cost recovery for the program. Upon completion of its evaluation, the Department will work with the City Attorney's office to ensure that any ensuing fee proposals will meet all legal requirements.

**Target Implementation Date:** Raftelis Consulting and the Department will complete work on the fee study, to prepare a proposal for revised fees for consideration by the City Council by January 30, 2021, and the Department will work with the City Attorney to ensure all legal requirements are met.

**RECOMMENDATION #4:** Upon completion of the fee study, the Public Utilities Department should work with the Office of the City Attorney and the Participating Agencies to review and revise, as appropriate, Interjurisdictional Agreements to include fees for service that achieve appropriate cost recovery under the guidelines of Council Policy 100-05 and Administrative Regulation 95.25, as well as Proposition 218. The revised agreements should include mechanisms to adjust fees in response to changes in the cost of service.

**Management's Response:** Agree. As noted in the audit, a portion of IWCP expenses and revenues are derived from permittees that are outside of City limits and that are in the jurisdiction of Participating Agencies (PAs) of the Metropolitan Wastewater Joint Powers Authority (Metro JPA). The Department intends to seek permit fees for IWCP functions and tasks that are uniform regardless of the location of the permittee.

The PAs of the Metro JPA are currently in the process of approving an amended and restated agreement that describes wastewater expenses they are responsible for paying. That amended and restated agreement explicitly notes that upon its effective date, the City and the PAs intend to negotiate in good faith on additional matters, including the proportion of

IWCP costs that PAs are ultimately responsible for (the existing agreement precludes using IWCP costs to determine overall PA payments for use of the City's wastewater treatment infrastructure). Negotiations on this are anticipated to begin immediately after the amended and restated agreement is approved by all PAs, which is currently anticipated by November 2020. Any revisions to Metro JPA agreements will be subject to negotiations, and while the Department will seek an appropriate and timely outcome regarding IWCP costs, the Department cannot guarantee a specific outcome or timeframe.

**Target Implementation Date:** The Department anticipates entering negotiations on further amendments to the Metro JPA Agreement by November 2020.

**RECOMMENDATION #5:** Upon completion of the fee study, we recommend the Public Utilities Department, in consultation with the City Attorney's Office, should develop a proposal for consideration by the City Council to update fees for Industrial Users within the City of San Diego. This proposal should include fees that achieve appropriate cost recovery under the guidelines of Council Policy 100-05 and Administrative Regulation 95.25, as well as Proposition 218. The revised fee schedules should include mechanisms to adjust fees in response to changes in the cost of service.

**Management's Response:** Agree. As noted in our response to Recommendation 3, the Department has engaged Raftelis Consulting to create a fee model that can be used to determine fees for full cost recovery of IWCP activities by allocating expenses to specific IWCP functions and tasks. This model is substantially complete.

Raftelis Consulting is currently evaluating the appropriate level of direct cost recovery for the program. Upon completion of its evaluation the Department will work with the City Attorney's office to ensure that any ensuing fee proposals will meet all legal requirements. While the Department may propose updated fees, the decision to actually implement those fees rests with the City Council.

**Target Implementation Date:** Raftelis Consulting and the Department will complete work on the fee study, and prepare a proposal for revised fees for consideration by the City Council by January 30, 2021, and the Department will work with the City Attorney to ensure all legal requirements are met.

**RECOMMENDATION #6:** The Public Utilities Department should move the Industrial Wastewater Control Program's budget from the Municipal Wastewater Fund to the Metropolitan Wastewater Fund.

**Management's Response:** Agree. As the IWCP is a treatment program, it is appropriate for it to be budgeted in the Metropolitan Wastewater Fund. Metropolitan Wastewater Fund expenses are shared by the City and the PAs. The City's current agreement with the PAs precludes the City from charging PAs for general IWCP expenses; however, as noted in the response to Recommendation 4, the Department intends to enter negotiations with the PAs of the Metro JPA to determine an appropriate share of IWCP expenses that to be borne by the PAs. Upon completion of these negotiations, it will be appropriate to move the IWCP budget from the Municipal Sewer Fund to the Metropolitan Wastewater fund.

Moving the IWCP budget requires reallocating IWCP expenses and revenues through the City's restructure process. Requests for restructures generally must be submitted by operating departments to the Department of Finance by October in order for them to be implemented in the following fiscal year's budget.

**Target Implementation Date:** The Department intends to include the IWCP's budget in the Metropolitan Sewer Fund after completing negotiations with the PAs. If this is completed by the fall of 2021, in accordance with DoF's schedule, this should then be reflected in the FY 2023 budget. If negotiations with the PAs do not conclude by the fall of 2021, the budgetary transition may not be possible until the following fiscal year (Fiscal Year 2024).

**RECOMMENDATION #7:** The Public Utilities Department should work with the Office of the City Attorney to seek recovery, to the greatest extent possible allowed by law, of all unbilled costs related to Industrial Wastewater Control Program application review, permitting, inspection, and monitoring.

**Management's Response:** Agree. While bills for IWCP permitting and sampling performed for Metro JPA PA customers have not been sent since FY 2017, the Department is able to determine the unbilled parties and amounts.

While PAs are not billed for general IWCP costs, as discussed in Recommendations 4 and 6, PAs do pay for their share of the Metro Wastewater system's treatment expenses. On an annual basis, PAs make initial payments for their anticipated use, and then after a reconciliation of their anticipated and actual use, they are issued refunds or additional bills to true-up those initial payments. The Department intends to send bills for unbilled IWCP fees to the appropriate PAs at the same time that it sends its true-up refunds/invoices.

**Target Implementation Date:** The Department is working to notify PAs of amounts due; it anticipates sending invoices for unbilled amounts by December 30, 2020.

**RECOMMENDATION #8:** The Public Utilities Department should establish a centralized billing process and standardized billing policies and procedures for all IWCP fees and charges. These policies and procedures should be documented in a process narrative and should:

- a. Establish responsibilities and timelines for generating and sending invoices for all IWCP fees and charge;
- b. Establish responsibilities and timelines for performing a periodic reconciliation of all IWCP revenue accounts;
- c. Establish guidelines and procedures for recording labor time, if necessary to determine invoice amounts;
- d. Establish guidelines and procedures for calculating invoice amounts; and

Ensure that appropriate Separation of Duties controls are enforced.

**Management's Response:** Agree. While there is an existing process for billing City of San Diego businesses, billing businesses that fall outside of the City's boundaries and in the boundaries of the various PAs is complicated. In some cases, those businesses are billed directly, and in others the PA in whose jurisdiction those businesses are located is billed. The

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Kyle Elser, Interim City Auditor, Office of the City Auditor

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Department's past practices have not been clearly documented, and the Department is currently evaluating its past processes while developing instructions and guidelines for calculating the appropriate yearly costs to PAs and permittees that are located outside the City. This includes:

- Developing instructions and documenting a standard operating procedure for current sampling and permitting fees charged to PA's using PIMS data (expected to be complete in December 2020);
- The Environmental Monitoring and Technical Services (EMTS) and Finance Divisions working to ensure the methodology for PA fees are appropriate for billing (expected to be complete in January 2021); and
- EMTS completing the reorganization of the IWCP and assigning the responsibility of annually billing PAs to the Support Services Group (expected to be complete in October 2020, with bills annually to PAs or outside permittees annually in October).

Note that implementation of this process will require negotiations with PAs, as is indicated in the responses to Recommendations 4 and 6.

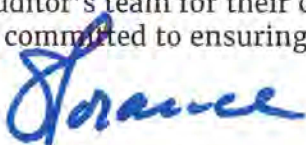
**Target Implementation Date:** The Department's Environmental Monitoring and Technical Services Division is working in conjunction with its Finance Division to complete these operating procedures by January 30, 2021.

**RECOMMENDATION #9:** The Public Utilities Department should perform a comprehensive review of all PIMS settings and invoice calculating features to ensure that invoices are automatically generated by PIMS and sent in a timely manner.

**Management's Response:** Agree. The Department currently invoices City of San Diego and County businesses automatically with approved fees pursuant to the 1984 Council Resolution or County agreement. As described in our response to Recommendation 8, PA bills require annual calculations. The process described in our response to Recommendation 8 will contain approved timelines. Additionally, the Department is developing a PIMS replacement program through the RFP process; the bidding period is expected to open in September 2020. This new PIMS will have documented billing invoice processes that sync with SAP system.

**Target Implementation Date:** The Department anticipates the new PIMS system to be implemented by June 2021. This timeline may need to be modified depending on the implementation timelines of respondents to the RFP to ensure successful implementation.

Again, we appreciate the opportunity to provide comments on this audit, and thank the City Auditor's team for their cooperation and professionalism throughout the audit process. PUD is committed to ensuring substantial progress is made on addressing these findings.



Shauna Lorance  
Director

cc: Kris Michell, Chief Operating Officer  
Aimee Faucett, Chief of Staff, Office of the Mayor



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Kyle Elser, Interim City Auditor, Office of the City Auditor

July 9, 2020

Jeff Sturak, Assistant Chief Operating Officer

Rolando Charvel, Chief Financial Officer

Johnnie Perkins, Deputy Chief Operating Officer

Jessica Lawrence, Director of Policy and Council Affairs, Office of the Mayor

Matthew Helm, Chief Compliance Officer

Juan Guerreiro, Interim Executive Assistant Director, Public Utilities Department

Lisa Celaya, Assistant Director, Public Utilities Department

John Stufflebean, Assistant Director, Public Utilities Department

Peter Vroom, Deputy Director, Public Utilities Department

Charles Modica, Deputy Director, Public Utilities Department

Andy Hanau, Interim Assistant City Auditor, Office of the City Auditor

# **EXHIBIT 2**

# Public Utilities

## Customer Service

☹ We are currently experiencing longer than normal hold times in our call queue. We ask for your patience and apologize for any inconvenience.

We are here to help. Our customers are our first priority. Below you will find useful information about Public Utilities' services and facilities, your water and sewer bill, how you can pay easily, and your rights and responsibilities.

### **[Billing \(https://www.sandiego.gov/public-utilities/customer-service/billing\)](https://www.sandiego.gov/public-utilities/customer-service/billing)**

Information on paying your bill, calculating your bill and starting or stopping service.

### **[Water and Sewer Rates \(https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates\)](https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates)**

Water and sewer billing rates, recycled water rates, rate increases and oversight, and related information.



## Your Home Plumbing

- **Water** – Information (<https://www.sandiego.gov/public-utilities/customer-service/your-home-plumbing/water>) about your water meter, your home water plumbing and how you can check for leaks and reduce your costs.
- **Sewer** – Information (<https://www.sandiego.gov/public-utilities/customer-service/your-home-plumbing/sewer>) about your sewer lateral, your home sewer plumbing and how you can prevent sewage blockages and reduce your costs.

### **[Water and Wastewater Facilities \(https://www.sandiego.gov/public-utilities/customer-service/water-wastewater-facilities\)](https://www.sandiego.gov/public-utilities/customer-service/water-wastewater-facilities)**

Public Utilities Department operates several major facilities to treat water and wastewater.

### **[Speakers and Tours \(https://www.sandiego.gov/public-utilities/customer-service/speakers-and-tours\)](https://www.sandiego.gov/public-utilities/customer-service/speakers-and-tours)**

The Public Utilities representatives are available to speak about specific water and wastewater topics for various groups and meetings. Tours are available for the Pure Water San Diego demonstration facility.

### **[Reservoir Lakes \(https://www.sandiego.gov/reservoir-lakes\)](https://www.sandiego.gov/reservoir-lakes)**

Visit one of our reservoir lakes for boating, cycling, fishing, jogging, walking and other recreational activities.

### **[Contact Information \(https://www.sandiego.gov/public-utilities/customer-service/contact-information\)](https://www.sandiego.gov/public-utilities/customer-service/contact-information)**

Phone numbers, addresses and web links to help you get the information you need.

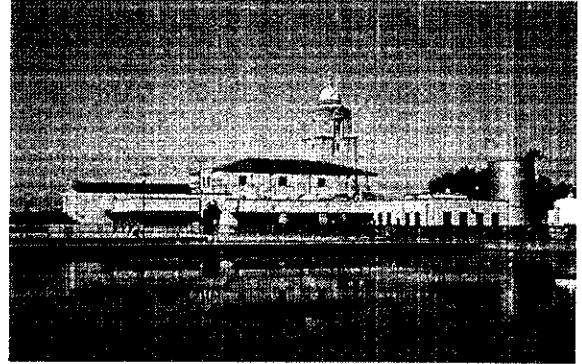
# Public Utilities

## Water and Wastewater Facilities

The City of San Diego's Public Utilities Department operates several major facilities to treat water and wastewater.

### Alvarado Water Quality Lab

Located adjacent to the Alvarado Water Treatment Plant, Water Quality Lab staff includes chemists, microbiologists and sub-professionals. Samples are brought to this central location from the treatment plants, water sampling sites and the ocean monitoring boats for chemical and biological analysis as necessary to insure proper operation of the treatment plants, and compliance with federal and state permits and environmental protection.



### Alvarado Water Treatment Plant

Located adjacent to Murray Reservoir, the Alvarado Water Treatment Plant provides treated drinking water to customers in the central section of the city. Plant capacity is 120 million gallons of treated drinking water per day. For more information, see the [Water Quality](https://www.sandiego.gov/public-utilities/water-quality) (<https://www.sandiego.gov/public-utilities/water-quality>) section. This [fact sheet](https://www.sandiego.gov/sites/default/files/water_treatment_plants_fact_sheet.pdf) ([https://www.sandiego.gov/sites/default/files/water\\_treatment\\_plants\\_fact\\_sheet.pdf](https://www.sandiego.gov/sites/default/files/water_treatment_plants_fact_sheet.pdf)) also includes more information about the City's water treatment plants.

### Environmental Monitoring and Technical Services Laboratory

Located at Liberty Station, Environmental Monitoring and Technical Services supports the City's [Ocean Monitoring Program](https://www.sandiego.gov/public-utilities/sustainability/ocean-monitoring) (<https://www.sandiego.gov/public-utilities/sustainability/ocean-monitoring>), the largest and most comprehensive program of its kind in the world. Lab staff oversees all regulatory permits, and takes and analyze samples of the ocean bottom, fish and water near the Point Loma and South Bay outfalls.

### Metropolitan Biosolids Center

The Metropolitan Biosolids Center is the City of San Diego's regional biosolids treatment facility. Biosolids are the nutrient-rich, processed organic material produced by the wastewater treatment process. The facility produces dewatered biosolids that are approximately 30% solids and 70% water, the consistency of wet plaster. For more information, see the [Metropolitan Biosolids Center Master Plan](https://www.sandiego.gov/public-utilities/permits-construction/metro-biosolids-center-master-plan) (<https://www.sandiego.gov/public-utilities/permits-construction/metro-biosolids-center-master-plan>). And to learn more, this [fact sheet](https://www.sandiego.gov/sites/default/files/metropolitan_biosolids_center_fact_sheet.pdf) ([https://www.sandiego.gov/sites/default/files/metropolitan\\_biosolids\\_center\\_fact\\_sheet.pdf](https://www.sandiego.gov/sites/default/files/metropolitan_biosolids_center_fact_sheet.pdf)) about the center.

### Miramar Water Treatment Plant

The Miramar Water Treatment Plant provides treated drinking water to an estimated 500,000 customers in the northern section of the city. Located adjacent to Miramar Reservoir, the plant has a capacity of 144 million gallons of treated drinking water per day. For more information, see the [Water Quality](https://www.sandiego.gov/public-utilities/water-quality) (<https://www.sandiego.gov/public-utilities/water-quality>) section. This [fact sheet](https://www.sandiego.gov/sites/default/files/water_treatment_plants_fact_sheet.pdf) ([https://www.sandiego.gov/sites/default/files/water\\_treatment\\_plants\\_fact\\_sheet.pdf](https://www.sandiego.gov/sites/default/files/water_treatment_plants_fact_sheet.pdf)) also includes more information about the City's water treatment plants.

### North City Water Reclamation Plant

The North City Water Reclamation Plant can treat up to 30 million gallons of wastewater per day. Reclaimed water produced at the plant is distributed throughout the northern region of San Diego via more than 79 miles of distribution to our customers for irrigation, landscaping and industrial use. The plant also provides reclaimed water for the City of Poway. Reclaimed pipelines, sprinkler heads, meter boxes and other irrigation equipment are color-coded purple to distinguish reclaimed water pipes from drinking water systems. For more information, see the [Recycled Water](https://www.sandiego.gov/public-utilities/sustainability/recycled-water) (<https://www.sandiego.gov/public-utilities/sustainability/recycled-water>) section. For annual monitoring reports, see the [Wastewater Treatment Monitoring Reports](https://www.sandiego.gov/public-utilities/sustainability/wastewater-plant-monitoring) (<https://www.sandiego.gov/public-utilities/sustainability/wastewater-plant-monitoring>) web page. The North City Water Reclamation Plant is also the home of the [Pure Water San Diego](https://www.sandiego.gov/public-utilities/sustainability/pure-water-sd) (<https://www.sandiego.gov/public-utilities/sustainability/pure-water-sd>) project. To learn more, please see this [fact sheet](https://www.sandiego.gov/sites/default/files/water_reclamation_plants_fact_sheet.pdf) ([https://www.sandiego.gov/sites/default/files/water\\_reclamation\\_plants\\_fact\\_sheet.pdf](https://www.sandiego.gov/sites/default/files/water_reclamation_plants_fact_sheet.pdf)) about the City's water reclamation plants.

### Otay Water Treatment Plant

The Otay Water Treatment Plant provides treated drinking water to an estimated 100,000 customers in the southern section of the city. Located adjacent to the City's Lower Otay Reservoir, the plant has a capacity of 34 million gallons of treated drinking water per day. For more information, see the [Water Quality](https://www.sandiego.gov/public-utilities/water-quality) (<https://www.sandiego.gov/public-utilities/water-quality>) section. This [fact sheet](https://www.sandiego.gov/sites/default/files/water_treatment_plants_fact_sheet.pdf) ([https://www.sandiego.gov/sites/default/files/water\\_treatment\\_plants\\_fact\\_sheet.pdf](https://www.sandiego.gov/sites/default/files/water_treatment_plants_fact_sheet.pdf)) also includes more information about the City's water treatment plants.

### Point Loma Wastewater Treatment Plant

The Point Loma Wastewater Treatment Plant (<https://www.sandiego.gov/public-utilities/customer-service/water-wastewater-facilities/point-loma>) treats approximately 175 million gallons of wastewater per day generated in a 450-square-mile area by more than 2.2 million residents. Located in Point Loma, the plant has a treatment capacity of 240 million gallons per day. .



### Pure Water Facility

The City's 1-million-gallon-per-day demonstration Pure Water Facility is open for free public tours. Participating in a tour is a great way to learn about the water purification process and get an up-close look at the cutting-edge technology used to clean recycled water to produce safe, high-quality drinking water. For more information, see the [Pure Water](https://www.sandiego.gov/public-utilities/sustainability/pure-water-sd) (<https://www.sandiego.gov/public-utilities/sustainability/pure-water-sd>) section.

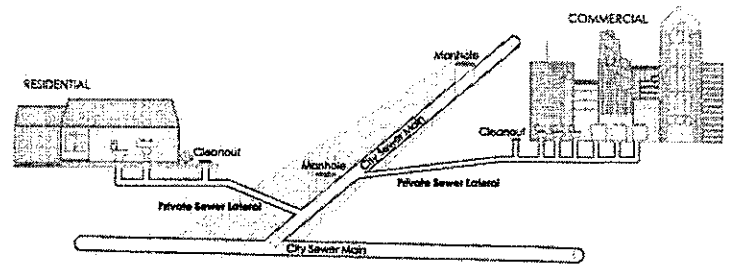
### South Bay Water Reclamation Plant

The South Bay Water Reclamation Plant relieves the South Metro Sewer Interceptor System and provides local wastewater treatment services and reclaimed water to the South Bay. The plant has a wastewater treatment capacity of 15 million gallons a day. Reclaimed pipelines, sprinkler heads, meter boxes and other irrigation equipment are color-coded purple to distinguish reclaimed water pipes from drinking water systems. For more information, see the [Recycled Water](https://www.sandiego.gov/public-utilities/sustainability/recycled-water) (<https://www.sandiego.gov/public-utilities/sustainability/recycled-water>) section. For annual monitoring reports, see the [Wastewater Treatment Monitoring Reports](https://www.sandiego.gov/public-utilities/sustainability/wastewater-plant-monitoring) (<https://www.sandiego.gov/public-utilities/sustainability/wastewater-plant-monitoring>) webpage. To learn more, please see this [fact sheet](https://www.sandiego.gov/sites/default/files/water_reclamation_plants_fact_sheet.pdf) ([https://www.sandiego.gov/sites/default/files/water\\_reclamation\\_plants\\_fact\\_sheet.pdf](https://www.sandiego.gov/sites/default/files/water_reclamation_plants_fact_sheet.pdf)) about the City's water reclamation plants.

# Public Utilities

## Your Sewer Plumbing System

The sewerage system for a home or property is connected to the City sewer main through a sewer lateral. The property owner is responsible for the maintenance of that lateral from the property all the way to the connection with the sewer main. This connection may be in the street, past the property line; on an easement; or in a canyon. Usually after clearing the lateral, a licensed plumber will assess the condition of the pipe by televising it. If the pipe has a break or a crack, the homeowner must repair the portion of pipe that lies between the house and the property line.



If the plumber finds a break in or collapse of the lateral beyond the property line, the licensed plumber should call the City's Sewer Emergency Line at 619-515-3525 to file a Plumber's Report. The City will investigate within 24 hours.

If you are planning on buying a home, in addition to the Home Inspection specialist who will look at the property in question, it is a good idea to also get a report on the condition of the house's lateral connection by a licensed plumber.

The leading causes of public sewer spills, roots and cooking grease, are also the leading causes of lateral spills on private properties. Maintaining your sewer lateral, keeping it clean and open, can save you a great deal of money in plumbing and cleaning bills, and eliminate the aggravation a sewage backup will cause.

### Keeping your sewer lateral in good shape

Keeping your sewer lateral in good condition is important as it helps [prevent sewer spills](https://www.sandiego.gov/public-utilities/sewer-spill-reduction/preventing-sewer-spills) and costly repairs.

- Never pour [cooking grease](https://www.sandiego.gov/sites/default/files/legacy/mwwd/pdf/greaseeng.pdf) down the drain. Freeze it in a suitable non-recyclable container and dispose of it in the trash.
- Recycle large amounts of residential cooking oil or grease by disposing of it at the [Miramar Landfill Recycling Center](https://www.sandiego.gov/environmental-services/recycling/centers/miramarrecycle).
- If any cooking oil or grease gets in your drain, immediately flush the drain with cold water.
- Never flush non-soluble objects down your toilet. This includes food, tampons, sanitary napkins, cleaning rags, diaper wipes, etc.
- If you are having problems with roots infiltrating your sewer lateral, use one of the commercially available rooticides available at most home improvement stores.
- If you have a property cleanout, flush your lateral through the cleanout using a high pressure hose at least once a year.
- Be sure to use a licensed plumber when having your sewer lateral televised or repaired.

### Documents/Policies

- [Sewer Lateral Fact Sheet](https://www.sandiego.gov/sites/default/files/legacy/mwwd/pdf/sewerlateral.pdf)
- [Building Service Lateral Illustration](https://www.sandiego.gov/sites/default/files/legacy/mwwd/pdf/lateral.pdf)
- [Maintenance of Street/Alley Sewer Laterals Policy](https://www.sandiego.gov/sites/default/files/legacy/mwwd/pdf/policyalley.pdf)
- [Sewer Main/Lateral Connections in Easements and Easement Maintenance Policy](https://www.sandiego.gov/sites/default/files/legacy/mwwd/pdf/policyeasement.pdf)
- [Encroachment Sewer Lateral Connections and Maintenance Policy](https://www.sandiego.gov/sites/default/files/legacy/mwwd/pdf/policyencroach.pdf)
- [Claims Related to Water Main Breaks and Sewer Backups](https://www.sandiego.gov/sites/default/files/legacy/mwwd/pdf/policybreaks.pdf)

### Related Information

- [Sewer Construction and Development](https://www.sandiego.gov/public-utilities/permits-construction/construction-and-development/sewer) - Information about permits and fees, design guidelines and standards, approved materials list and more.
- [GIS Information](https://www.sandiego.gov/public-utilities/customer-service/your-home-plumbing/gis) (Maps and Records) - The

City's [Development Services Department \(https://www.sandiego.gov/development-services\)](https://www.sandiego.gov/development-services) has records showing when your water line was installed and can provide a map showing where your sewer lateral connects to the City's sewer main. You can schedule an appointment to review the records by calling 619-446-5300. **However, the City does not have diagrams or other information regarding where sewer lines are located on your property.** For that information, you may want to contact a licensed plumber.

- [Service Line Warranties \(https://www.sandiego.gov/corporatepartnership/existing/slwa\)](https://www.sandiego.gov/corporatepartnership/existing/slwa) (preferred service line warranty partner of the City of San Diego)
- [Your Water Plumbing System \(https://www.sandiego.gov/public-utilities/customer-service/your-home-plumbing/water\)](https://www.sandiego.gov/public-utilities/customer-service/your-home-plumbing/water)

# Sewer Laterals: Street or Alley Main Connection

## Maintenance:

### Keep your Lateral Clean

Roots, cooking grease and debris are destructive elements to any wastewater system.

**Roots, cooking grease and debris problems in a sewer lateral are the responsibility of the property owner.**

Keep your lateral free of anything that may inhibit the flow and lead to a possible sewage spill. To avoid problems with:

**Roots**—Use a root inhibitor available at most hardware stores or schedule it for periodic mechanical cleaning.

**Fats, Oils and Grease (FOG)**—In addition to frying pan grease, fats and oils can also come from salad dressings, butter and mayonnaise. Put FOG in the trash and not down the drain.

(Go to <http://www.sandiego.gov/mwwd/pdf/greaseeng.pdf> to view/download a FOG brochure.)

**Debris**—Be careful what you put down the drains. Items like disposable wipes, toys, disposal diapers, toilet paper, and feminine hygiene products can cause blockages.

## What Is A Sewer Lateral?

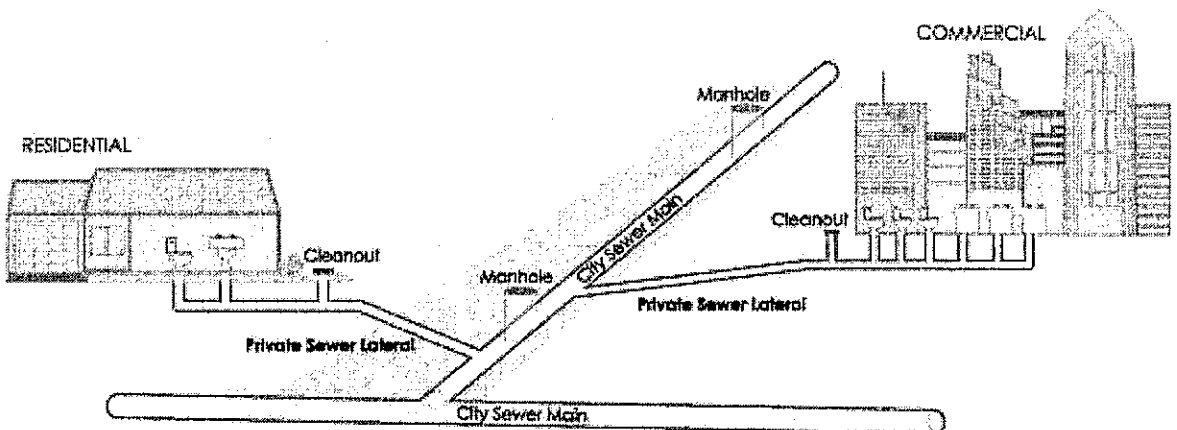
A sewer lateral is the pipe that connects all the sinks, drains and toilets in your home or building to the City sewer main, which is usually located in the City's right-of-way (street). The entire length of the sewer lateral, extending from your home or building to its point of connection with the City sewer main underneath the street, is your private property.

## Maintenance Is The Property Owner's Responsibility

It is your responsibility as a property owner to maintain your sewer lateral. Proper maintenance includes keeping your lateral clean and clear of any obstruction, such as roots, grease and debris. The level, type and frequency of maintenance required is highly dependent on the age and type of lateral (e.g., plastic vs. cast iron) and the practices of the building occupants. Newer, plastic laterals with intact joints and seals may function for years without problems. Older laterals of concrete, clay or cast iron may have root intrusion or deteriorated sections and require regular inspection and/or more frequent cleaning.

## Minimizing Lateral Problems

Drainage problems are commonly caused by obstruction or blockage in the lateral. You can minimize or eliminate such problems by being careful of what you dispose of in your drains and garbage disposals and what you flush down the toilet. Fats, oils and grease (FOG) can clog laterals and eventually block the sewer mains. (For information on how to properly dispose of FOG and other waste see blue box at left).



## If a Problem Occurs

If your drains start to run slowly, there's a good chance you have some sort of obstruction in your lateral. A licensed plumber or drain-cleaning specialist should be able to clear the obstruction. If the lateral is broken, you will have to repair the lateral. In general, problems with your lateral are your responsibility as the property owner.

*NOTE: Encroachment sewer laterals and sewer laterals located within easements are subject to different rules and policies. For more information, please click here (or visit the link online), at <http://www.sandiego.gov/mwwd/general/plumbing.shtml>*



If you have lost all sewer facilities (e.g. toilet cannot flush and water will not drain at all) as a result of a total blockage or pipe break located in the section of lateral within the City's right-of-way (street), the City may correct the problem at no expense to you. Your plumber must first file a plumber's report (free of charge) over the phone by calling the City's Water and Sewer Emergency Line at (619) 515-3525. City crews will respond within 24 hours of the report and perform work subject to the following conditions:

- If the City's investigation finds that the problem is located in the section of the lateral inside your property line, City crews will not perform work.
- If a private structure or object, such as a block wall, blocks City crews' access to the section of lateral within the City's right-of-way, they will not perform work.
- If City crews find the problem was caused by the lack of routine maintenance of the sewer lateral (e.g. clearing roots or grease), the property owner will be billed for the cost of the City's response (time, equipment, labor, materials and overhead).
- The City will under no circumstances dig on private property.

### **If There is a Sewage Spillage**

If sewage has spilled from your cleanout, you should control and contain the spill as much as possible with sandbags, dirt or cat litter, turn off the water if necessary, and call a licensed plumber or drain-cleaning specialist.

If the spillage has extended into the City's right-of-way (street), then call the City's Water and Sewer Emergency Line at (619) 515-3525. City crews will clean up spillage within the City's right-of-way. You will be held responsible for the City's response costs if the spillage resulted from a blockage or break in the section of the sewer lateral located under your property.

If you need more information on the City's sewer lateral policies, visit our Wastewater website or click here at <http://www.sandiego.gov/mwwd/general/plumbing.shtml>.

### **Submitting a Video**

If your sewer facilities are not fully blocked but there is a structural problem and you wish to submit a video from the plumber, you may submit the video to the City. The City will review it and consider taking action if the structural defect warrants that action. Call Public Utilities' Construction Support section at 858-614-5742 for more information.

## **City Council Policy 400-10 Maintenance of Street/Alley Sewer Laterals**

"The property owner shall be responsible for both the routine maintenance and the required cleaning of the sewer line, from the building to the City sewer main.

When failure or stoppage of a sewer lateral occurs, City crews will not respond until the property owner has established, through the use of a licensed plumber or certified drain cleaning service, that the stoppage or failure is between the property line and the sewer main; and that it is beyond the scope of the property owner to relieve or repair. The licensed plumber or licensed drain cleaning service is to contact the City of San Diego Water and Sewer 24-Hour Emergency Service.

The City of San Diego shall respond to calls and make repairs when the licensed plumber or licensed drain cleaner has established that the sewer lateral is blocked or has collapsed beyond the property line in a public right-of-way.

If City crews respond to a call to make repairs, and it is determined that the property owner could have effectively maintained or repaired the lateral and failed to do so, the property owner will be billed for the full cost of City services including labor, material, equipment and overhead."

<p><b>City of San Diego, California</b>  <b>METROPOLITAN WASTEWATER DEPARTMENT</b></p> <p><b>WASTEWATER COLLECTION DIVISION</b>  <b>OPERATIONS AND POLICY MANUAL</b></p>	<p><b>Document No. C.12</b></p> <p><b>Effective Date:</b>  <b>January 30, 2003</b></p>
<p><b>SUBJECT: MAINTENANCE OF STREET/ALLEY</b>  <b>SEWER LATERALS</b></p>	<p><b>Supersedes: Systems Division</b>  <b>O&amp;P Items D.08 of 6/01/91</b></p>

**1. PURPOSE**

1.1\_ To define areas of responsibility requiring action from the City.

**2. AUTHORITY**

- 2.1 City Council Policy 400-10
- 2.2 Director, Metropolitan Wastewater Department
- 2.3 Deputy Director, Wastewater Collection Division

**3. DEFINITIONS**

- 3.1 *Maintenance* is “the upkeep of the sewer lateral to prevent stoppages and the removal of obstructions when they occur”.
- 3.2 *Sewer Lateral* is “the pipe that connects the property's sewer lines to the City sewer main”.

**4. RESPONSIBILITY**

- 4.1 Property owner/agent shall be responsible for:
  - a. both the routine maintenance and the required cleaning of the sewer line, from the building to the City sewer main.
    - when failure or stoppage of a sewer lateral occurs, City crews will not respond until the property owner/agent has established, through the use of a licensed plumber or certified drain cleaning service, that the stoppage or failure is between the property line and the sewer main, and that it is beyond the scope of the property owner/agent to relieve or repair. The licensed plumber or licensed drain cleaning service is to contact the City of San Diego Water and Sewer 24-Hour Emergency Service.

<p><b>City of San Diego, California</b>  <b>METROPOLITAN WASTEWATER DEPARTMENT</b></p> <p><b>WASTEWATER COLLECTION DIVISION</b>  <b>OPERATIONS AND POLICY MANUAL</b></p>	<p><b>Document No. C.12</b></p> <p><b>Effective Date:</b>  <b>January 30, 2003</b></p>
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4.2 City of San Diego:

- a. shall respond to calls and make repairs when the licensed plumber or licensed drain cleaner has established that the sewer lateral is blocked or has collapsed beyond the property line in a public right-of-way.

4.3 If City crews respond to a call to make repairs, and it is determined that the property owner/agent could have effectively maintained or repaired the lateral and failed to do so, the property owner/agent will be billed for the full cost of City services including labor, material, equipment, and overhead.

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Christopher J. Toth  
Deputy Director, WWC Division

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Date

## **Common Questions and Answers About Your Sewer Lateral**

### **Q: There is a bad odor coming from my drains. Who do I call?**

**A:** For sewer odors originating from inside your home or building, call a licensed plumber or drain-cleaning specialist. (Please consult your local yellow pages, as the City of San Diego cannot provide any recommendations). For sewer odors originating from outside your home or building, call the City's Water and Sewer Emergency Line at (619) 515-3525.

### **Q: Sewage has backed up into my home or building. What should I do?**

**A:** For assistance with sewer backups, call a licensed plumber or drain-cleaning specialist. (Please consult your local yellow pages, as the City of San Diego cannot provide any recommendations). Obstructions in your lateral should be cleared by a licensed plumber or drain-cleaning specialist. If the blockage cannot be cleared by routine maintenance methods or the lateral is broken, then lateral will need to be repaired. Repairing your lateral is generally your responsibility. If the problem in the lateral is located past your property line, within the City's right-of-way, and you have no sewer facilities (e.g. toilet cannot flush and water will not drain at all), then have your plumber file a report with the City's Water and Sewer Emergency Line at (619) 515-3525.

### **Q: Does the City require a property line cleanout?**

**A:** No, the City of San Diego does not require property line cleanouts.

### **Q: I have to call a plumber several times each year to clear my lateral. Isn't there a limit to how many times I have to call a plumber before it is the City's responsibility to do something?**

**A:** No, there is no limit to how many times you have to call a plumber to clean your lateral if the problem is related to maintenance (e.g. roots or grease/debris buildup). Remember, you are the owner of your private lateral.

### **Q: Does the City charge for plumbers' reports?**

**A:** No, the City of San Diego does not charge to file a plumber's report.

### **Q: Will the City reimburse me for the expenses I incurred?**

**A:** No, there is no reimbursement for plumbing expenses. You are responsible for the maintenance of your sewer lateral. The City of San Diego will only repair or clear at no charge to you a problem located in the section of the lateral that lies beyond your property line and in the City right-of-way (street), provided that you have lost all sewer facilities (e.g. toilet cannot flush and water will not drain at all) and that the problem was not caused by your lack of routine maintenance.

# Public Utilities

## Sewer Billing Rates

**Sewer rates effective Jan, 1, 2022.**

Each customer's City of San Diego sewer rate is made up of two parts:

1. The fixed monthly service charge (Base Fee), which is based on your customer class.
2. The sewer rate is the Sewer Service Charge, which is based on the amount and strength of the wastewater you discharge to the sewer system.

For an explanation of how the Sewer Service Charge is determined for single-family residential customers, please visit the [Winter Monitoring Period information page \(http://www.sandiego.gov/public-utilities/customer-service/billing/winter\)](http://www.sandiego.gov/public-utilities/customer-service/billing/winter). For multi-family customers, the Sewer Service Charge is determined each month based upon a percentage of how much water is used.

Sewer charges vary by customer class and have been developed to ensure that each class pays its proportionate share of operating, maintaining, repairing and upgrading the sewer system.

## Current Wastewater Service Charges

To view current wastewater service charges, please review the information below your customer class:

### Single-Family Residential Customer

	01/01/22 Rate
Base Sewer Fee for Two Months	\$28.88
Sewer (rate per HCF**)	\$4.7860
<b>New Customer Fee: Base + Sewer ***</b>	<b>\$114.43</b>
Maximum Fee: Base + Sewer (fee capped at 20 HCF/month)	\$219.72

\* Rate is based on 95% of total water use on a month-to-month basis.

\*\* HCF (One Hundred Cubic Feet) = 748 Gallons.

\*\*\* The "New Customer Fee" is charged to single-family residential customers that have not established a winter month's water-use history in their current place of residence. It is based on the average single-family residential usage of 9 HCF/month.

### Multi-Family Residential Customer

	01/01/22 Rate*
Base Sewer Fee	\$14.14
Sewer	\$4.7860 per HCF**

\* Rate is based on 95% of total water use on a month to month basis

\*\* HCF (One Hundred Cubic Feet) = 748 Gallons.

### Commercial / Industrial Customer

	01/01/22 Rate*
Base Fee \$/month	\$14.14
Flow \$/HCF WW **	\$3.1910
TSS \$/lb	\$0.4690

COD \$/lb \$0.2080

\* Rate reflects percentage of metered water use returned to sewer and pollutant loading based on national estimates of wastewater generation by businesses in the same Standard Industrial Classification (SIC) code as the business served. Where facility-specific values have been measured, they are used.

\*\* HCF (One Hundred Cubic Feet) = 748 Gallons.

**City-metered Sewage Flows, Imported Flows and Hauled Waste**

**01/01/22 Rate\***

Flow \$/HCF WW**	\$3.1350
TSS \$/lb	\$0.4690
COD \$/lb	\$0.2080

\* Rate applicable to contract customers and hauled waste customers. Base fee is included in rates above and not charged separately; cost to serve is based on metered wastewater flows and actual strengths.

\*\* HCF (One Hundred Cubic Feet) = 748 Gallons.

**Regulatory Hauled Waste and Industrial User Program Fees**

Information about the regulatory fees for hauled waste program, as well as the Industrial Wastewater Control Program fees can be found on the program's web page (<https://www.sandiego.gov/public-utilities/permits-construction/industrial-user-permits>).

For questions or other information, please contact the Public Utilities Department at [customer@sanidiego.gov](mailto:customer@sanidiego.gov) (mailto:customer@sanidiego.gov) or 619-515-3500.

# Public Utilities

## Water and Sewer Rates

### Your Dollars at Work

The City of San Diego's Public Utilities Department recognizes the importance of its responsibility with the money you pay for water and sewer services. When you pay your bill, the money goes back into our infrastructure and services, including:

- Purchasing water – between 85% and 90% of the water we use is imported and must be purchased from the [San Diego County Water Authority \(https://www.sdcwa.org\)](https://www.sdcwa.org), an independent public agency that serves as San Diego County's regional water wholesaler.
- Maintaining, repairing and replacing more than 6,000 miles of pipeline, 20,000 valves, 26,000 fire hydrants, 276,000 metered water service connections, nine reservoir lakes, six treatment plants, two ocean outfalls and dozens of pumps, reservoir tanks and other infrastructure.
- Daily testing to provide safe, quality drinking water.
- Protecting the safety and security of our water and wastewater systems.
- Operating our state-of-the-art water and wastewater treatment facilities.
- Regular ocean monitoring and testing.
- Providing services to assist customers resolve billing, water use and other issues.

[Water Billing Rates \(https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/water\)](https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/water)

[Sewer Billing Rates \(https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/sewer\)](https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/sewer)

[Recycled Water Rates \(https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/recycled\)](https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/recycled)

[Rate Increases \(https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/increases\)](https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/increases)

[Independent Rates Oversight Committee \(IROC\) \(https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/iroc\)](https://www.sandiego.gov/public-utilities/customer-service/water-and-sewer-rates/iroc)



# REMINDER:



For the first time in 10 years, wastewater rates increase in January 2022. In addition, a pass-through charge from the San Diego County Water Authority of 3% to pay for increases in the cost of imported water supplies goes into effect in January 2022.

The rate adjustment will increase revenue 5% for wastewater services and will help the City continue to upgrade core infrastructure by replacing aging pipes and wastewater mains. It also will fund investments like Pure Water, a landmark water recycling project that will increase the supply of local drinking water, avoid wastewater treatment cost increases and reduce discharges to the ocean.

The change to your bill will vary based on your type of account (commercial, residential, etc.) and your use of the wastewater system.

For more information, please visit [www.sandiego.gov/rate-increases](http://www.sandiego.gov/rate-increases).



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# Public Utilities

## Policies and Procedures

The Public Utilities Department's Billing and Collection Policies are implemented with the approval of the Mayor and City Council. These policies mostly apply to customers who don't pay their water/sewer bill on time.

Important components of the policies and procedures include:

- **Backbilling:** The Public Utilities Department is obligated to bill for all services provided.
- **Extensions:** Extensions can only be granted by Public Utilities Department management under limited conditions. These include: health and safety, legal negotiations, or if, by not granting one, there would be a negative impact on other ratepayers.
- **Deferred Payments:** The Public Utilities Department has the authority to grant a deferred payment for up to 12 months. Payment must be made within one year or referred to City Treasurer.
- **Security Deposits (<https://www.sandiego.gov/public-utilities/customer-service/billing/deposits>):** The deposit, for those customers requiring one, is equal to two average billing periods.
- **Discontinuation of Service:** At this time, the City of San Diego's Public Utilities Department does not discontinue residential water service for nonpayment. This practice is currently being reviewed and any modifications will be consistent with state of California Senate Bill 998 - Discontinuation of residential water service: urban and community water systems.
  - **Español:** Por el momento, el Departamento de Servicios Públicos de la Ciudad de San Diego no interrumpe el servicio de agua residencial por falta de pago. Esta práctica se está revisando actualmente y cualquier modificación será consistente con el proyecto de ley 998 del Senado del estado de California: discontinuación del servicio residencial de agua: sistemas de agua urbanos y comunitarios.
  - **Ngừng dịch vụ:** Vào thời điểm này, Sở Dịch vụ công cộng của thành phố San Diego đang tạm dừng việc cắt dịch vụ nước sinh hoạt đối với những người dân không thanh toán. Sự việc này hiện đang được xem xét và tất cả những sửa đổi sẽ phù hợp với Dự Luật 998 của Thượng Viện California - Ngừng dịch vụ nước sinh hoạt: Hệ thống nước đô thị và cộng đồng.
  - **서비스 중단:** 현재 샌디에고 시 공공 시설 부서는 수도요금 미납 시에 주택용 수도 서비스 공급을 중단하지 않습니다. 현재 이러한 관행은 검토 중에 있으며 모든 수정 사항은 캘리포니아 주 상원 법안 998(도시 및 지역사회 수도 시스템의 주택용 수도 서비스 중단에 관한 법안)을 준수합니다.
  - **Pagpuputol sa Serbisyo:** Sa kasalukuyan, ang Kagawaran ng Pampublikong Utilidad ng Lungsod ng San Diego ay hindi nagpuputol sa serbisyo ng tubig sa mga kabahayan dahil hindi pagbabayad. Ang nakasanayang ito ay kasalukuyang pinag-aaralan at anumang pagbabago ay magiging kaayon sa Panukalang Batas ng Senado 998 sa estado ng California - Pagpuputol sa serbisyo ng tubig sa kabahayan: mga sistema ng tubig sa lungsod at komunidad.
  - **服務中止:** 目前，聖地亞哥市公用事業部門不會以欠費為由而中止住宅用水服務。這一舉措現正接受重審，各項改動均會遵守加利福尼亞州參議院第998號法案《中止住宅用水服務：城市與社區用水系統》之規定。

### Fee

Shut-Off Order Processing Fee	\$30
Restore service	\$25
Remove meter due to an illegal reconnect	\$45
Reinstall meter after an illegal reconnect	\$38
Check Return	\$25

### Meter controversy test:

Up to 1-inch meter	\$66
1.5-inches to 2-inches meters	\$99
3-inches and larger (installed above ground)	\$182.63

3-inches or larger (installed underground) \$510.26

These fees are strictly cost recoverable; they are equal to how much it costs the Public Utilities Department to perform the work.  
For more information, please contact the Public Utilities Department at 619-515-3500.

# Public Utilities

## Winter Monitoring Period for Single-Family Customers

### Determining Sewer Rates

In the City of San Diego, each single-family domestic customer's individualized flat sewer rate is based upon the amount of water used during the previous winter. This system, rather than a flat rate for all customers, more fairly apportions the costs of running the sewer system.

Every winter, primarily during the months of November through April, the City monitors the amount of water each customer uses. These months are when the measuring takes place because that is when the highest percentage of water used is returned to the sewer system. The City monitors your water usage during the two billing cycles, and uses the total from the cycle with the least amount of usage to calculate your sewer rate.

Once the monitoring period is complete, an individualized flat rate is calculated for each customer, and that rate goes into effect beginning with the bill that includes July 1 of the following year. So, by conserving water during the winter monitoring period you can lower your sewer rate during the following year.

That rate is in effect for one year, and will be updated with new data every July 1. If you are new to a home, your sewer rate will be based on the citywide average until a reading can take place for you during the next winter.

If you would like to know the exact dates of your winter monitoring period, please call our Customer Support Division at 619-515-3500.

## Public Utilities

### Security Deposit

In most cases, the payment of a security deposit is required to open a utility account with the City of San Diego. The amount of the deposit required is based on the service category and prior pattern of consumption at the service location. If the service location has no prior consumption history, the security deposit will be a standard deposit amount or be based on usage history at a similar service location. The security deposit requirement may be waived when the customer has an active account with a 12-month history of consecutive on-time payments.

A security deposit is also required on an account when one or more of the following occurs:

- There is a poor history of on-time payment with the Public Utilities Department
- Two or more payments are returned unpaid within a one-year period
- The account is shut off for nonpayment more than once during the prior one-year period
- The customer/accontholder is unwilling to provide minimum personal identification information (such as a driver's license number) when opening the account

In most cases, security deposits are refunded after 12 consecutive months of on-time payment.

For more information about security deposits, please contact a Public Utilities Department Customer Service Representative at 619-515-3500.

# Public Utilities

## How to Read Your Bill Single Family Residents

If you have your current bill in front of you, it's easy to match up the information with the outlined bill below.

Click on a section for more information.

**IMPORTANT MESSAGES**

\*\*\*\*\* IMPORTANT INFORMATION REGARDING NEW WATER RATES \*\*\*\*\*  
 On Nov. 21, 2013, the City Council approved changes to water rates effective Jan. 1, 2014 and Jan. 1, 2015. This first bill is for the billing period that crosses Jan. 1, 2014 and is prorated. The old rates are used to calculate charges for the portion prior to Jan. 1, 2015 and the new rates were used to calculate the portion starting on Jan. 1, 2015. Bills for subsequent periods will be calculated using just the new rates. The net impact to each customer's bill will vary depending on the service category and amount of water used. For a detailed look at the new rates please visit our website at [www.sandiego.gov/water](http://www.sandiego.gov/water).

**ACCOUNT INFORMATION**

Service Address  
1234 APPLE ST

Account Number: 610000345678  
 Service Period: 06/19/13 to 09/17/15  
 Invoice date: 08/19/15  
 Payment Due Date: 09/03/15

**METER INFORMATION**

Serial	Size	Rating	Previous	Current	HCF
12345678	3/4	1A75	1A75	1S22	33

1 HCF = 7.48 Gallons      Average Gallons per Day: 116

**WATER USE IN HCF (Hundred Cubic Feet)**

Average Single Family Residential use in your area this billing period is 24

**FEES & CHARGES**

Water Services		
Single Family Residential Base Fee		40.52
Water Used	43 HCF	
Tier 1	8.00 HCF @ 3.8950	31.17
Tier 2	16.00 HCF @ 4.3636	69.82
Tier 3	12.00 HCF @ 6.2332	74.81
Tier 4	7.00 HCF @ 8.7657	61.36
Total Charge for Water Used		237.16
<b>Sewer &amp; Storm Drain</b>		
Sewer Base Fee		30.56
Sewer Service Charge		35.99
Storm Drain		1.90
<b>Total Current Charges</b>		346.32
Previous Balance		54.09
Deposit Required		102.00
<b>TOTAL DUE</b>		<b>502.32</b>

**PUBLIC UTILITIES** Quality • Value • Reliability • Customer Service (619) 515-1500  
 For all of San Diego... every day!

610000345678      1234 APPLE ST  
 Account Number      Service Address

JANE CUSTOMER  
 1234 APPLE ST  
 SAN DIEGO CA 92101-1234

Sep 03, 2015  
 Payment Due Date

**RETURN THIS PORTION**  
 MAKE CHECK PAYABLE TO CITY TREASURER

502.32  
**TOTAL AMOUNT DUE**

0002 1 610000345678 5 0000050232 8 0

## All Other Customer Classes

If you have your current bill in front of you, it's easy to match up the information with the outlined bill below.

Click on a section for more information.

**WATER & WASTEWATER SERVICES** PUBLIC UTILITIES

Mailed on: Apr 29 2013

Page 1 of 1

May 14 2013  
 TWENTY DOLLARS

JOHN Q CITIZEN  
 123 MAIN ST  
 SAN DIEGO CA 92173-2870

**RETURN THIS PORTION**  
 MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000123456 9 0000039115 1 0

5091.16  
 TWENTY NINE DOLLARS AND 16 CENTS

ACCOUNT NO. 010000123456      JOHN Q CITIZEN  
 SERVICE ADDRESS 123 MAIN ST

MA 3 ITS  
 EXP. DATE 05/15/13

5091.15  
 TWENTY NINE DOLLARS AND 15 CENTS

ACCOUNT NUMBER	DATE	PERIOD	AMOUNT	DESCRIPTION	AMOUNT	AMOUNT	AMOUNT
Water Base Fee	02-27-13	04-25-13	58	Water Base Fee	38.00		
Water Uses	02-27-13	04-25-13	58	Meter size = 3/4 inch	150.37		
				4.605	4.605		
				14.00 HCF @ 33.6121 =	470.57		
				14.00 HCF @ 33.6121 =	470.57		
				20.00 HCF @ 34.3290 =	686.58		
Sewer Base Fee	02-27-13	04-25-13	58				20.58
Sewer Service Charge	02-27-13	04-25-13	58				126.56
Storm Drain							1.50
				Current Charges			591.15
				<b>TOTAL AMOUNT DUE</b>			<b>\$591.15</b>

CONSERVATION INFORMATION			
THIS YEAR	LAST YEAR	PERCENT	DIFFERENCE
58	34	58.6%	24
58	34	58.6%	24

San Diego's "Waste No Water"  
 Free In-home Water Surveys  
 Call 6-1-1999  
 For Linda 6-1-1999 visit  
[www.sandiego.gov/water/waterconservation](http://www.sandiego.gov/water/waterconservation)

THE CITY OF SAN DIEGO - PUBLIC UTILITIES DEPARTMENT • 1530 F STREET • KEEP THIS PORTION • 04/10/13 10:07

# Public Utilities

## Rate Increases

For the first time in 10 years, the City of San Diego increased wastewater rates, by 5%, starting in January 2022. In addition, a pass-through charge from the San Diego County Water Authority to pay for an increase in the cost of imported water increased water rates 3% beginning in January 2022.

The rate adjustment increases revenue 5% for sewer services and will help the City continue to upgrade core infrastructure by replacing aging pipes and sewer mains. It also funds investments like [Pure Water](/public-utilities/sustainability/pure-water-sd), a landmark water recycling project that will increase the supply of local drinking water, avoid wastewater treatment cost increases and reduce discharges to the ocean.

The changes to water and sewer bills vary based on the type of account (residential, commercial, etc.) and the use of the wastewater system.

The City currently imports as much as 90% of its water, the bulk of which is purchased from the San Diego County Water Authority (CWA). While the costs of purchasing water from CWA have risen over the past several years, the City is passed on a rate adjustment for the first time in two years of approximately 3% starting in 2022. Water and sewer rates in San Diego are comprised of base fees and usage charges for various customer classes.

The City conducted a [cost of service study](/www.sandiego.gov/sites/default/files/final_wastewater_report_03-23-21.pdf) on wastewater (sewer) rates to evaluate future revenue requirements for operating and capital costs. The study found that if the City's sewer rates remain unchanged, there will not be enough revenue to provide necessary wastewater and recycled water services between fiscal years 2022 and 2025. As a result, Public Utilities proposed a four-year consecutive rate increase starting with 5% in 2022, up to 4% in fiscal years 2023 and 2024, and up to 3% in fiscal years 2025 and 2026.

Proposed water and wastewater rate increases were presented to the City Council's Budget and Government Efficiency Committee on April 7, 2021.

On July 8, 2021, the City released [an addendum to the cost of service study](/www.sandiego.gov/sites/default/files/final_wastewater_report_with_addendum_appendices_07-07-21.pdf) that incorporated all of staff's recommended changes to the cost of service study, as presented to the Council's Budget Committee on June 23, 2021. The cost of service study with the addendum is the final document used to calculate the noticed proposed rate changes.

**[The City Council approved the rate increases on Tuesday, Sept. 21, 2021](https://www.sandiego.gov/sites/default/files/2021-09-21_city_council_votes_to_increase_wastewater_rates.pdf) ([https://www.sandiego.gov/sites/default/files/2021-09-21\\_city\\_council\\_votes\\_to\\_increase\\_wastewater\\_rates.pdf](https://www.sandiego.gov/sites/default/files/2021-09-21_city_council_votes_to_increase_wastewater_rates.pdf)).**

For more information:

- [Customer Bill Calculator for 2022](https://www.sandiego.gov/public-utilities/customer-service/billing/bill-calculator-2022) (<https://www.sandiego.gov/public-utilities/customer-service/billing/bill-calculator-2022>)
- [Water and Wastewater Rate Increases Questions and Answers](/www.sandiego.gov/sites/default/files/water_and_wastewater_rate_increases_fa.pdf) ([/www.sandiego.gov/sites/default/files/water\\_and\\_wastewater\\_rate\\_increases\\_fa.pdf](/www.sandiego.gov/sites/default/files/water_and_wastewater_rate_increases_fa.pdf)) (English)
- [Aumento de Tarifas de Agua y Aguas Residuales Preguntas y Respuestas](/www.sandiego.gov/sites/default/files/aumento_de_tarifas_de_agua_y_aguas_residuales.pdf) ([/www.sandiego.gov/sites/default/files/aumento\\_de\\_tarifas\\_de\\_agua\\_y\\_aguas\\_residuales.pdf](/www.sandiego.gov/sites/default/files/aumento_de_tarifas_de_agua_y_aguas_residuales.pdf)) (Español)
- [Water and Wastewater Rate Increases Fact Sheet](/www.sandiego.gov/sites/default/files/sdiego_rateshandout_21_v2.1_print.pdf) ([/www.sandiego.gov/sites/default/files/sdiego\\_rateshandout\\_21\\_v2.1\\_print.pdf](/www.sandiego.gov/sites/default/files/sdiego_rateshandout_21_v2.1_print.pdf)) (English)
- [Información sobre aumentos de tarifas de agua y aguas residuales](/www.sandiego.gov/sites/default/files/sdiego_rateshandout_21_sp_v1.3.pdf) ([/www.sandiego.gov/sites/default/files/sdiego\\_rateshandout\\_21\\_sp\\_v1.3.pdf](/www.sandiego.gov/sites/default/files/sdiego_rateshandout_21_sp_v1.3.pdf)) (Español)

Below is the Proposition 218 notice which has been mailed to all City water and wastewater customers to inform them of the proposed rate increases. There are also translations of the notice in five additional languages.

- [Proposition 218 \(English\)](/www.sandiego.gov/sites/default/files/prop_218_notice_mailer_sept2021.pdf) ([/www.sandiego.gov/sites/default/files/prop\\_218\\_notice\\_mailer\\_sept2021.pdf](/www.sandiego.gov/sites/default/files/prop_218_notice_mailer_sept2021.pdf))
- [Proposition 218 \(Spanish\)](/www.sandiego.gov/sites/default/files/sdiego_prop_218_notice_mailer_sp_v1.4.pdf) ([/www.sandiego.gov/sites/default/files/sdiego\\_prop\\_218\\_notice\\_mailer\\_sp\\_v1.4.pdf](/www.sandiego.gov/sites/default/files/sdiego_prop_218_notice_mailer_sp_v1.4.pdf))
- [Proposition 218 \(Tagalog\)](/www.sandiego.gov/sites/default/files/sdiego_prop_218_notice_mailer_tag_v1.3.pdf) ([/www.sandiego.gov/sites/default/files/sdiego\\_prop\\_218\\_notice\\_mailer\\_tag\\_v1.3.pdf](/www.sandiego.gov/sites/default/files/sdiego_prop_218_notice_mailer_tag_v1.3.pdf))



- [Proposition 218 \(Vietnamese\) \(//www.sandiego.gov/sites/default/files/sdiego\\_prop\\_218\\_notice\\_mailer\\_viet\\_v1.4.pdf\)](http://www.sandiego.gov/sites/default/files/sdiego_prop_218_notice_mailer_viet_v1.4.pdf)
- [Proposition 218 \(Chinese\) \(//www.sandiego.gov/sites/default/files/sdiego\\_prop\\_218\\_notice\\_mailer\\_ch\\_v1.3.pdf\)](http://www.sandiego.gov/sites/default/files/sdiego_prop_218_notice_mailer_ch_v1.3.pdf)
- [Proposition 218 \(Somali\) \(//www.sandiego.gov/sites/default/files/sdiego\\_prop\\_218\\_notice\\_mailer\\_som\\_v1.3.pdf\)](http://www.sandiego.gov/sites/default/files/sdiego_prop_218_notice_mailer_som_v1.3.pdf)

## Public Forums

In order for the public to have opportunities to receive answers to questions about the proposed rate increases, several community forums were held virtually during the months of July, August and September 2021. Answers to many of the questions asked at the forums are provided in the linked document below. Also, click to watch a recording of the Sept. 2, 2021, public forum provided in English and Spanish.

- [Questions and Answers from Recent Public Forums \(//www.sandiego.gov/sites/default/files/questions\\_and\\_answers\\_from\\_public\\_forums\\_090821.pdf\)](http://www.sandiego.gov/sites/default/files/questions_and_answers_from_public_forums_090821.pdf) - Revised Sept. 8, 2021



[. \(youtu.be/KwcPxlyFtPE\)](https://youtu.be/KwcPxlyFtPE)

Recording of Sept. 2, 2021, Public Forum (<https://youtu.be/KwcPxlyFtPE>)


## Additional Documents Concerning the Wastewater Cost of Service Study

- [Independent Review of Cost of Service Study \(//www.sandiego.gov/sites/default/files/1\\_iba-stantec\\_report.pdf\)](http://www.sandiego.gov/sites/default/files/1_iba-stantec_report.pdf)
- [Public Utilities Department Response to Independent Review \(//www.sandiego.gov/sites/default/files/2\\_response\\_to\\_indepedent\\_review.pdf\)](http://www.sandiego.gov/sites/default/files/2_response_to_indepedent_review.pdf)
- [Additional Information on Carbon Oxygen Demand for Residential Customers \(//www.sandiego.gov/sites/default/files/3\\_additional\\_information\\_on\\_residential\\_cod.pdf\)](http://www.sandiego.gov/sites/default/files/3_additional_information_on_residential_cod.pdf)
- [Additional Information on Inflow and Infiltration Assumptions \(//www.sandiego.gov/sites/default/files/4\\_additional\\_info\\_on\\_inflow\\_and\\_infiltration.pdf\)](http://www.sandiego.gov/sites/default/files/4_additional_info_on_inflow_and_infiltration.pdf)
- [Industrial Wastewater Control Program Cost Allocation Study \(//www.sandiego.gov/sites/default/files/5\\_iwcp\\_cost\\_allocation\\_study.pdf\)](http://www.sandiego.gov/sites/default/files/5_iwcp_cost_allocation_study.pdf)



# Customer Care Center

## Customer Care Center


 We are currently experiencing longer than normal hold times in our call queue. We ask for your patience and apologize for any inconvenience.

You can access your Water/Sewer Utility account online through our MyWaterSD portal or mobile application.

With a MyWaterSD account, you can:

- pay your water/sewer bill online
- access your current and past water/sewer bills
- view usage
- set up recurring payments
- contact Public Utilities Department

### Download the MyWaterSD App!

 App Store (<https://itunes.apple.com/us/app/mywatereasy-san-diego/id1202281723?mt=8>)

 Google Play ([https://play.google.com/store/apps/details?id=com.sus.scm\\_cosd&hl=en\\_US&showAllReviews=true](https://play.google.com/store/apps/details?id=com.sus.scm_cosd&hl=en_US&showAllReviews=true))

[Login to Your MyWaterSD Account \(https://customerportal.sandiego.gov/portal\)](https://customerportal.sandiego.gov/portal)

## Learn More

## Register

### Have Your Paper Bill Handy

To create a MyWaterSD account, you'll need information from your paper bill (account number, name on account, etc.).

### A Note about Paperless Billing

*After you register, your account will automatically switch to paperless billing. You will receive an email notification instead of a paper bill when your new bill is ready to view online.*

To switch back to paper bills, edit that option in your MyWaterSD account.

Register Now (<https://customerportal.sandiego.gov/portal/SiteMaintenance.aspx>)

## Water Emergencies

To report a water leak, sewer spill or water pressure problem, call **619-515-3525**.

## Customer Assistance

Please contact Public Utilities' Customer Service at **619-515-3500** or [CustomerCare@sandiego.gov](mailto:CustomerCare@sandiego.gov) (<mailto:CustomerCare@sandiego.gov>) for assistance with your water/sewer utilities service, including opening and closing accounts and billing inquiries.

Normal office hours are 7:30 a.m. to 5 p.m., Monday through Friday (except [holidays \(https://www.sandiego.gov/city-holidays\)](https://www.sandiego.gov/city-holidays)).

For information and questions about City [reservoir lakes \(https://www.sandiego.gov/reservoirs-lakes\)](https://www.sandiego.gov/reservoirs-lakes), please email [lakes@sandiego.gov](mailto:lakes@sandiego.gov) (<mailto:lakes@sandiego.gov>).

[Provide Feedback \(/customer-care/pubutil/feedback\)](/customer-care/pubutil/feedback)

[Terms & Conditions \(/customer-care/terms\)](/customer-care/terms)

[More Payment Options \(/water/rates/billing/paymentoptions\)](/water/rates/billing/paymentoptions)

[Public Utilities \(https://www.sandiego.gov/public-utilities\)](https://www.sandiego.gov/public-utilities)

# Public Utilities

## Establishing or Canceling Service

To establish or stop water / sewer services, you can:

- Contact the Public Utilities Department's Customer Service at 619-515-3500 or [CustomerCare@sandiego.gov](mailto:CustomerCare@sandiego.gov) (<mailto:CustomerCare@sandiego.gov>).